TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 190

WILLIAM H. BLODGETT, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, PETITIONER,

vs.

ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, ET AL, EXECUTORS

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF FAIRFIELD COUNTY, STATE OF CONNECTICUT

PETITION FOR CERTIORARI FILED MARCH 5, 1927

CERTIORARI GRANTED APRIL 25, 1927

No. 191

ARTHUR SILBERMANN, CHARLES MOEBIUS, JOSEPH PLAUT, ET AL., EXECUTORS, ETC., PLAINTIFFS IN ERROR,

vs.

WILLIAM H. BLODGETT, TAX COMMISSIONER OF THE STATE OF CONNECTICUT

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF CONNECTICUT

FILED MARCH 5, 1927

(28,581, 28,582)



(32,531, 32,532)

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[fol. 1] [Caption omitted]

Appearances of counsel omitted in printing.

[fols. 2 & 3]

IN PROBATE COURT FOR DISTRICT OF STAMFORD

MOTION FOR APPEAL—Filed in Superior Court January 2, 1926

Estate of ROBERT B. HIRSCH, Late of Stamford, in said District, Deceased

To the Probate Court for the District of Stamford:

The subscribers represent that:

(1) They were appointed executors in any by the will of Robert B. Hirsch, deceased, who last dwelt in Stamford, Connecticut, and died on the 23rd day of September, 1924, and duly qualified as such in this court upon hearing duly had, on the 15th day of January, 1925.

(2) On the 4th day of December, 1925, this court made an order and decree, allowing and approving a certain computation of inheritance and succession tax due the State of Connecticut from the estate of the said Robert B. Hirsch, deceased, filed in this court by William H. Blodgett, Tax Commissioner of the State of Connecticut, on the 15th day of September, 1925, and ordering that the total amount of said tax be the sum of $188,780.58 as fixed by the computation of the Tax Commissioner filed as aforesaid, and that the said executors forthwith pay the amount of said tax to the Treasurer of the State of Connecticut, and exhibit to this court a proper receipt therefor.

(3) The subscribers are aggrieved by said finding, order and decree of this court.

Wherefore, the subscribers move an appeal, and do hereby appeal from said order and decree to the Superior Court to be held at Bridgeport, within and for the County of Fairfield, on the first Tuesday of January, 1926, and

herewith give a bond with sufficient surety to prosecute said appeal to effect.

Dated this 18th day of December, 1925.

Arthur Silberman, Charles Moebius, Joseph Plaut, Abraham L. Gutman.

Bond on appeal for $150.00, approved and filed January 2, 1926, omitted in printing.

[fol. 4] In Probate Court for District of Stamford

Estate of Robert B. Hirsch, Late of Stamford, in said District, Deceased

December 28, 1925.

Present: Hon. Floyd B. Bartram, Judge.

Order Allowing Appeal—Filed in Superior Court January 2, 1926

Upon the written motion of Arthur Silberman, Charles Moebius, Joseph Plaut and Abraham L. Gutman, executors of the will of said decedent, showing to this court that they are aggrieved by an order and decree of this court made and entered on the 4th day of December, 1925, allowing and approving a certain computation of inheritance and succession tax due the State of Connecticut from the estate of said Robert B. Hirsch, deceased, filed in said Court by William H. Blodgett, Tax Commissioner of the state of Connecticut, on the 15th day of September, 1925, and ordering that the total amount of said tax be the sum of $188,780.58 as fixed by the computation of the Tax Commissioner filed as aforesaid, and that said executors forthwith pay the amount of said tax to the Treasurer of the State of Connecticut, and exhibit to said Court a proper receipt therefor, and being so aggrieved, now within one month from the rendition of said order and decree, they have appealed therefrom to the Supreme Court to be held at Bridgeport, within and for the County of Fairfield on the

first Tuesday of January, 1926, and have offered sufficient bond to prosecute said appeal to effect as by said motion dated December 18, 1925, on file and record in this Court will more fully appear.

This Court finds the allegations of said motion to be true, and thereupon grants said motion and allows said appeal.

And the said Arthur Silberman, Charles Moebius, Joseph Plaut and Abraham L. Gutman as principals, and Charles D. Lockwood, of said Stamford, as surety, have given bond as required by law, to the State of Connecticut, in the penal sum of one hundred fifty dollars, to prosecute said appeal to effect, which bond is approved and accepted by this Court and ordered to be recorded and kept on file, and it is therefore

[fol. 5] Ordered, That said appellants cause notice of said appeal to be given to William H. Blodgett, by some proper officer or indifferent person, by depositing a true and attested copy of this motion and of this order, in the post office, postage paid, at Stamford, Connecticut, directed to said William H. Blodgett, by registered letter, at State Capitol, Hartford, Connecticut at least four days before the first Tuesday of January, 1926, and that due return be made to said Superior Court.

Floyd B. Bartram, Judge.

State of Connecticut,
County of Fairfield, ss:

Stamford, December 31st, 1925.

Then and there I made service hereof by depositing a true and attested copy of said motion and of this order, in the post office, postage paid, at Stamford, Connecticut, directed to said William H. Blodgett, by registered letter at State Capitol, Hartford, Connecticut.

Attest: Andrew Schlechtweg, Constable of the Town of Stamford.

[File endorsement omitted.]

Judge's certificate to foregoing papers omitted in printing.

[fol. 6] In Superior Court of Fairfield County

Arthur Silberman, Charles Moebius, Joseph Plaut, Frank C. Lewis, and Abraham L. Gutman, Executors,

vs.

William H. Blodgett, Tax Commissioner

(Appeal from Probate)

Reasons of Appeal—Filed January 11, 1926

Arthur Silberman, Charles Moebius, Joseph Plaut, Franklin C. Lewis and Abraham L. Gutman, executors of the will of Robert B. Hirsch, late of Stamford, Fairfield County, Connecticut, hereby specify their reasons of appeal from the decree of the Court of Probate for the District of Stamford dated December 4, 1925, approving the computation of succession tax due to the State of Connecticut from the estate of said Robert B. Hirsch, filed by William H. Blodgett, Tax Commissioner of the State of Connecticut, in said Court of Probate on September 15, 1925; and determining the total amount of said succession tax is $188,780.58, and finding that said estate is subject to the succession tax to the State of Connecticut, and direct-[fol. 7] ing the executors to pay the amount of said tax to the Treasurer of the State of Connecticut, as set forth in said order.

1. Said Court of Probate erred in holding that all of said estate appearing in the inventory of the assets of said estate on file in said Probate Court is subject to the Connecticut succession tax.

2. Said Court of Probate erred in holding that the computation of succession tax due to the State of Connecticut from the estate of said decedent, amounting to $188,780.58, made by William H. Blodgett, Tax Commissioner of the State of Connecticut, is correct.

3. Said Court of Probate erred in holding that the interest of the decedent in the partnership of William Openhyn & Sons, New York, is subject to the Connecticut succession tax.

4. Said Court of Probate erred in holding that the bonds owned by the decedent and located without the State of Connecticut are subject to the Connecticut succession tax.

5. Said Court of Probate erred in holding that the stocks owned by the decedent of corporations not organized under the laws of Connecticut, the certificates of which were physically located in New York City at the time of decedent's death, are subject to the Connecticut succession tax.

6. Said Court of Probate erred in holding that the miscellaneous property set forth in Schedule E of the inventory filed by the executors with the Court of Probate for the District of Stamford is to the extent that it is due from non-residents of the State of Connecticut (which includes all of said miscellaneous property, except the "Lassner account receivable") subject to the Connecticut succession tax.

7. Said Court of Probate erred in not holding that the attempt of the State of Connecticut to levy a succession tax on the transfer of said partnership interest, said bonds, said stock and said miscellaneous property due from non-residents of Connecticut, constitutes the taking of property without due process of law in violation of the Federal constitution.

[fol. 8] 8. Said Court of Probate erred in not holding that the transfer of said partnership interest, bonds, stocks, and miscellaneous property due from non-residents of Connecticut took place under and by virtue of the laws and authority of the State of New York and the authority of the Surrogate's Court of New York County, New York State, conferred by said laws, and without any right, intervention or power in relation thereto vested in or exercised by the Court of Probate for the District of Stamford or by the State of Connecticut.

9. Said Court of Probate erred in not holding that the attempt of the State of Connecticut to assert jurisdiction or authority in relation to said transfer amounts to a failure to give full faith and credit to the laws of the State of New York conferring jurisdiction and power upon said Surrogate's Court of New York County, and relating to

said transfer, and is accordingly in violation of the Federal Constitution.

10. Said Court of Probate erred in holding that the gifts made by the will of the decedent to educational and charitable corporations in New York, and to trustees for the benefit of the Ethical Culture Society, a charitable and religious corporation organized in New York, are not exempt from the Connecticut succession tax.

Arthur Silberman, Charles Moebius, Joseph Plaut, Franklin C. Lewis, and Abraham L. Gutman, Executors of the Will of Robert B. Hirsch, deceased, by Cummings & Lockwood, Their Attorneys.

[File endorsement omitted.]

[fol. 9] In Superior Court of Fairfield County

[Title omitted]

Stipulation of Facts and Questions of Law—February 26, 1926

The parties to the above entitled action hereby stipulate that the facts are as follows:

1. Robert B. Hirsch died on September 23, 1924, a resident of and domiciled at Stamford, Fairfield County, Connecticut, leaving a will dated February 28, 1917, and two codicils thereto dated January 22, 1918, and January 23, 1919, respectively, which will and codicils were all executed in the City of New York, State of New York, in accordance with the requirements of the laws of both the State of New York and the State of Connecticut.

2. The plaintiffs, Charles Moebius, Arthur Silberman, Joseph Plaut, Franklin C. Lewis, and Abraham L. Gutman, named as executors in the twenty-fourth paragraph of the will of said decedent, are all residents of the State of New York, with the exception of Charles Moebius, who is a resident of the State of New Jersey, but whose business is within the State of New York. Emil Berolzheimer, named an executor in the will, predeceased the decedent.

3. At the time of the decedent's death, he owned the following property, the values given being those at the date of his death:

[fol. 10] (a) Real estate situated in Stamford, Connecticut	$45,000 00
(b) Bonds, as per Exhibit A hereto annexed.	615,642 84
(c) Stocks, as per Exhibit B hereto annexed.	277,984 25
(d) Interest in partnership of William Openhym & Sons, of New York	1,687,245 34
(e) Furniture in Stamford, Connecticut	243 00
(f) Cattle, horses, poultry, auto, wagons and carriages, situated in Stamford, Connecticut	1,058 75
(g) Other miscellaneous property as per Exhibit C hereto annexed	17,891 67
	2,645,065 85

4. Of said property, the real estate, furniture, cattle, horses, poultry, auto, wagon- and carriages set forth in Paragraph 3, subdivision- (a), (e) and (f) above, were physically located within the State of Connecticut at the time of the death of said decedent.

5. All of the bonds and the certificates of the shares of stock set forth in Exhibits A and B hereto annexed were at the time of the decedent's death, and for a long time prior thereto had been physically located in safe deposit boxes in the State of New York. Of the bonds none were due to the decedent from residents of Connecticut, or corporations organized under the laws of Connecticut, with the exception of the mortgage bonds of The Hubbard Heights Golf Club, Inc., valued at $521.67, and the bonds of The Stamford Woman's Club, Inc., which had no value. Of the shares of stock none were of corporations organized under the laws of Connecticut, with the exception of three shares of stock of the Stamford Theatre, Inc., valued at $120.00.

6. Of the miscellaneous property set forth in Exhibit C hereto annexed, the entire amount was due from corporations doing business in New York and located in the State of New York, and not organized under the laws of Con-

necticut, with the exception of the "Lassner account receivable," amounting to $2,675.52, which was due to the decedent from a resident of the State of Connecticut, and [fol. 11] with the exception of the item of cash on hand in New York, amounting to $287.48, which consisted of coins and bank notes.

7. The partnership of William Openhym & Sons, of which the decedent was a general partner, and the interest in which forms the largest part of his estate, was a limited partnership organized under New York law, and having its principal place of business in New York City, in said State of New York, the last agreement therefor being dated December 1, 1921, at New York City. All of the surviving members of the firm are residents of the State of New York.

8. The parnership agreement provided that in the event of the death of any of the parties thereto the partnership should be dissolved, and the interest or share of the deceased partner should be taken and stated at the sum standing to the credit of the account of such deceased partner as shown by the inventory taken next preceding the date of such death, except that in determining said share the parties agreed that all shares of stock of mill or manufacturing companies should be valued at the book value in accordance with the books of such mill or manufacturing companies as per the inventory preceding the date of death, and the value of all marketable securities, such as bonds and shares of stock, that might be listed upon any exchange should be taken at the fair and reasonable market value at the time of death of the partner.

9. In accordance with said provisions of said partnership agreement the items of assets of said partnership, exclusive of "partners' investments," as hereinafter explained, were valued as follows:

(a)	Deposits in New York and French banks	$213,312 19
(b)	Trade acceptances, none of which were due from Connecticut residents or corporations	63,810 41
(c)	Notes and loans receivable, none of which were due from Connecticut residents or corporations	5,484 52

(d) Accounts receivable, less reserve for discount, of which $3,323.61 were due from Connecticut residents or corporations .	878,686	90
[fol. 12]		
(e) Merchandise inventory, physically situat- in New York	68,042	99
(f) Advances to consignors, none of which were due from Connecticut residents or corporations	1,165,025	11
(g) Prepaid expenses and advances to travelers, none of which were due from Connecticut residents or corporations	6,150	22
(h) Furniture and fixtures, physically situated in New York	8,000	00
(i) Real estate at College Point, Long Island, New York	15,812	27
(j) Rossie Velvet Company (incorporated under the laws of the State of New Jersey; plant situated at Mystic, Connecticut)	344,901	01
(k) Manhattan Silk Company (incorporated under the laws of the State of West Virginia; plant situated in New York City)	310,118	00
(l) United States Liberty Loan bonds, situated in New York City	692,421	40
(m) Stocks and bonds of corporations not incorporated under the laws of Connecticut (the certificates of stock and the bonds being situated in New York City)	1	00

10. In addition to the above partnership assets, the partnership held certain securities, delivered by the decedent to the partnership, entitled "partner's investments," pursuant to the terms of a letter agreement dated December 1, 1923, a copy of which is hereto annexed and marked Exhibit D.

11. Said "partner's investments," with their values as of the date of death of said decedent, are set forth in Exhibits A and B hereto annexed.

12. The partnership liabilities were determined pursuant to the provisions of said partnership agreement to be as follows:

Notes Payable	$525,000 00
Accounts Payable	238,133 32
Deposits Payable	206,470 73

[fol. 13] 13. With reference to the item "Advances to Consignors" (Paragraph 9, subdivision (f), the partnership had in its possession within the City of New York collateral securities in the form of merchandise of a value at all times in excess of the amount of advances to the respective consignors.

14. A summary of the provisions of the will and two codicils of the decedent is as follows:

Paragraph First directs the payment of debts, funeral and testamentary expenses.

Paragraph Second contains a bequest to an individual named of certain personal effects as a token of affection.

Paragraph Third bequeaths $300,000 and the proceeds of a life insurance policy in the Mutual Life Insurance Company of New York to certain trustees, all of whom are residents of New York, to pay the income during life to Mrs. Lassner, a resident of Stamford, Connecticut and upon her death to pay the principal of the fund to her daughter, who is also a resident of Stamford.

Paragraph Fourth devises to said Mrs. Lassner all of the real estate owned by the decedent and located in Stamford, Connecticut, and bequeaths the horses, cattle, automobiles and farm implements in and about said premises to her.

Paragraph Fifth bequeaths the sum of $20,000 to three trustees residing in New York City for the benefit of a cousin residing in Paris, who predeceased testator, with the proviso that in such event the principal of said legacy should become part of the residuary estate.

Paragraph Sixth bequeaths the sum of $12,500 to three trustees residing in New York City for the benefit of a daughter of said cousin, who also resides in Paris, for life, and upon her death, gives the principal of said legacy to the children of said French legatee.

Paragraph Seventh bequeaths a like amount of $12,500 to three trustees residing in New York City for the benefit of another daughter of said French cousin with similar [fol. 14] provisions as to the disposition of the principal of the legacy.

Paragraph Eight- bequeaths $5,000 each to three cousins named, all of who- reside in the City of New York and who survived testator.

Paragraph Ninth bequeaths $10,000 to trustees residing in New York to pay the income to one of testator's friends for life, said friend being a resident of New York, with direction to pay the principal to her issue, and in default of issue, the said principal becomes part of the residuary estate.

Paragraph Tenth bequeaths the sum of $10,000 to said trustees residing in the City of New York to pay the income to a servant of testator, who resides in Stamford, for life, with provision that the principal shall become part of the residuary estate upon her death.

Paragraph Eleventh bequeaths the sum of $25,000 to the Hudson Guild of the City of New York; $20,000 to Cooper Union for the Advancement of Science and Art of said City of New York; $10,000 to the Educational Alliance of said City of New York; $10,000 to the Hebrew Technical Institute for Boys of said City of New York; $10,000 to the Hebrew Technical Institute for Girls of said City of New York.

Paragraph Twelfth bequeaths the sum of $10,000 to the three New York Trustees above mentioned to pay income to a friend of testator in the City of New York, with the direction that the principal shall, upon her death, become part of the residuary estate. Said legacy was increased by a Codicil to the sum of $25,000.

Paragraph Thirteenth bequeaths to the Superintendent of the Ethical Culture School the sum of $15,000.

Paragraph Fourteenth contains the disposition of the residuary estate and is herein quoted in full as follows:

"Fourteenth. All the rest, residue and remainder of my estate of whatsoever kind to which I may be entitled at the time of my death, including all [fol. 15] legacies that for any reason may not have taken effect, I give, devise and bequeath unto Dr.

Felix Adler, Dr. John L. Elliott, Joseph Plaut, Robert D. Kohn, Emil Berolzheimer, B. Edmund David, Adelaide Pfeiffer Oppenheimer, Franklin C. Lewis, Alexander M. Bing, Herbert A. Wolff, Abraham L. Gutman and the Union Trust Company of New York, their survivors and survivor, successors and successor, in trust for the following purposes:—to invest the same as directed in paragraph Fifteenth of my will, and apply the net income thereof to the free education of poor and deserving children in the Ethical Culture School, now maintained by The Society for Ethical Culture in the City of New York or any other school carrying out the same purpose which may, at any time, be owned or maintained by or associated or affiliated with said Society for Ethical Culture, and also to the free education, maintenance and support of poor and deserving young men and women who may desire to fit themselves for the career of teachers and who shall have displayed to the satisfaction of the directors of the said Society for Ethical Culture sufficient capacity for such career; the proportion or parts of the income to be applied to scholarships and to such teachers, to be absolutely in the discretion of the trustees herein named, my preference being, however, that the bulk of the income shall be applied to the free education of poor and deserving children as aforesaid; provided however that if at any time said Society shall be dissolved or shall disband or shall cease to own or maintain or have associated or affiliated with it said above mentioned school or some other school carrying out similar purposes then the trust above described shall cease and said trustees herein named shall transfer and pay over the corpus of said trust fund to some other corporation which at said time owns or maintains or has associated or affiliated with it a school or system of free education for poor and deserving children without distinction of sex, race, creed, or color according to the methods that had been generally maintained in or approved by said Ethical Culture School or [fol. 16] methods similar thereto, best adapted to carry out the above mentioned purposes, with the power to said Trustees herein named in their discretion to organize promptly a corporation for such purposes, viz: the free education of poor and deserving children without distinction of sex, race, creed or color according to the methods which had been generally maintained in or approved by

said Ethical Culure School or methods similar thereto best adapted to carry out the above mentioned purposes, to which corporation, when organized, the property or funds bequeathed to said Trustees herein named as aforesaid shall be transferred by said Trustees.

"If the aforesaid trust shall become effective then I authorize my said Trustees herein named acting by majority vote (of which majority said Union Trust Company of New York shall be one), to fill any vacancy in their number, whenever such vacancy may occur, whether caused by failure to qualify, resignation, death, removal or otherwise, by appointment in writing duly acknowledged. I request that if practicable there shall always be as many Trustees in number as originally appointed herein.

"If for any reason the foregoing disposition of my residuary estate herein contained shall be invalid, or for any cause shall fail to take effect either in whole or in part, then I give, devise and bequeath my residuary estate, or so much thereof as shall fail to pass or to take effect under the provisions of this paragraph, unto Dr. Felix Adler, Dr. John L. Elliott, Professor Edwin R. A. Seligman, Mrs. Adelaide Pfeiffer Oppenheimer, Mrs. Miriam Sutro Price, Mrs. Gerda Goldfare Stein, Joseph Plaut, Emil Berolzheimer, Robert D. Kohn, B. Edmund Davis, Alexander M. Bing and Herbert A. Wolff, absolutely and forever. In case any one of said legatees last named shall die, his share shall be equally divided amongst the survivors. I feel confident that said legatees above named will follow what they believe to be my wishes but I expressly declare that this shall not be construed as emphasizing a trust [fol. 17] or any restriction or limitation whatsoever upon the bequest so made to them, but in the event aforesaid said legatees last above named shall hold and possess the property so bequeathed to them absolutely to dispose of as they deem best and without any limitation or restriction whatsoever."

Paragraph Fifteenth contains the powers of investment granted to the trustees named in the Will.

Paragraph Sixteenth contains the power to sell real and personal property granted to the executors and also the trustees.

Paragraph Seventeenth directs that the income of each trust legacy shall be paid to the beneficiary without amortization.

Paragraph Eigteenth directs that all inheritance, succession or transfer taxes shall be paid out of the capital of testator's estate and not charged against the share of any beneficiary.

Paragraph Nineteenth directs the executors to carry out the provisions of any partnership agreement in force at the time of testator's death.

Paragraph Twentieth provides that a Mr. Silberman, one of the executors and trustees named in the Will, and a partner of testator, shall not be disqualified from purchasing the whole or any part of the testator's interest in his firm.

Paragraph Twenty-First grants to the trustees for the time being of any trust fund power to fill vacancies and add to their number.

Paragraph Twenty-Second grants to the executors power to settle and discharge claims and demands due or against the estate.

Paragraph Twenty-Third exempts the trustees from giving bonds for the faithful discharge of their duties.

Paragraph Twenty-Fourth names the executors and trustees of the Will, viz: Arthur Silberman, Charles Moebius, Emil Berolzheimer, Joseph Plaut, Franklin C. Lewis and [fol. 18] Abraham L. Gutman. Mr. Berolzheimer predeceased testator. The said paragraph contains, amongst other provisions, the following sentence: "I further declare it to be my will that every authority, right, power or duty herein conferred upon my said Executors may be exercised by a majority of said Executors with the same force and effect as if all had joined therein."

The first Codicil contains a bequest to each and every employee of testator's firm William Openhyn & Sons, who may be employed in New York or in Lyon, France, and to every employee of the Manhattan Silk Company who may be employed at the New York office at the time of his death a certain percentage of the salary of such employee.

The second Codicil bequeaths legacies amounting to $45,000 to three persons therein named, one of whom is a resident of Stamford, Connecticut, the other two of New York. Said Codicil also contains a bequest of $20,000 to the three New York trustees to pay the income to a friend

of Mr. Hirsch, who at the time of testator's death resided in the City of New York. Upon the death of such legatee, the principal becomes part of the residuary estate.

15. Said will and codicils were offered for probate to the Surrogate's Court of the County of New York, in the State of New York, by the persons named as executors therein, upon a petition, a copy of the material portions of which is hereto annexed marked Exhibit E. A citation was issued to the heirs and next of kin of the decedent in accordance with the New York practise, and duly served, and upon the return of said citation, said Surrogate made a decree, admitting the said will and codicils to probate on the 28th day of November, 1924. A copy of said decree is annexed hereto marked Exhibit F. Said Surrogate thereupon issued letters testamentary to the five executors above named in form similar to that used in the case of a domiciled resident of the State of New York. A copy of said letters testamentary is hereto annexed marked Exhibit G. The executors thereafter applied for an order to publish a notice to creditors to present claims, and upon the 8th day of [fol. 19] December, 1924, the Surrogate of the County of New York granted such an order, and notice to the creditors to present claims was published in accordance therewith. On account of the death of Emil Berolzheimer, one of the trustees named in said paragraphs 3rd, 6th, 7th, 9th, and 10th, Abraham L. Gutman qualified as a trustee in accordance with document designated a designation, executed by the other two trustees named in said paragraphs, and said Abraham L. Gutman filed his oath of qualification in the Surrogate's Court of New York County. The persons named as trustees in paragraph 14 of the will of said decedent have filed oaths of qualification in the office of said Surrogate of the County of New York. The executors filed a petition in said Surrogate's Court for the appointment of an appraiser to ascertain and determine the transfer tax due the State of New York and an order appointing such appraiser was entered on the 19th day of January, 1925, and the executors have filed schedules with said appraiser.

16. The executors opened a bank account in the Central Union Trust Company in New York, at 80 Broadway, in said City of New York, and deposited monies received by

them from time to time from said estate in said account, and have never opened any account in any bank or trust company in the State of Connecticut, or in any other State than New York State. The executors have paid from funds so deposited in said trust company in New York City all of the legacies provided for in paragraphs 8th, 11th and 13th of the will, and in the first and second codicils, amounting to $229,297.45, and have paid the debts of the decedent and the federal estate tax and New York transfer tax from such funds. The executors have further paid from funds so deposited to the trustees named in paragraphs 3rd, 6th, 7th, 9th, 10th and 12th of the will and paragraph 3rd of the second codicil the amounts mentioned therein as the capital of the trust fund for the benefit of certain individuals specifically named in said paragraphs, the total amount of said payments being $404,820.11. At the time of decedent's death, the certificates of stock listed in Exhibit B hereto annexed, and constituting a part of the "partner's investments," were registered in the name of the decedent, and were not endorsed by the decedent and subsequent to the decedent's death said stocks were sold and transfer thereof made to the purchaser thereof by the executors, upon exhibiting to the transfer agents of said stock letters [fol. 20] testamentary showing such qualification and authority issued to them by said Surrogate's Court. Upon exhibiting to the Mutual Life Insurance Company of New York a copy of said letters testamentary, together with a proof of claim and certificate of death of said decedent, and the policy issued by said company on the life of said decedent, the executors received from said Company the proceeds of said life insurance policy. Upon exhibiting to the National City Bank of New York a copy of said letters testamentary the executors received from said Bank the amount of money on deposit therein to the credit of the decedent at the date of his death.

17. On the 31st day of December, 1925, the transfer tax appraiser appointed by the Surrogate's Court of New York County filed a report, a copy of which is hereto annexed marked Exhibit H, showing the items of property belonging to said estate upon which the State of New York computed the transfer tax.

The said items were as follows:

List of Items Taxable in New York

25 shares American International Corp, at 27	675 00
100 shares Central Union Trust Co. of New York at 630	63,000 00
64 shares Chase National Bank	
64 shares Chase Securities, at 363)	23,232 00
65 shares Farmers Loan & Trust Co., at 695	45,175 00
18 shares First National Bank of New York)	
18 shares First Security Co., at 1867½)	33,435 00
42 shares Hanover National Bank, at 880	36,960 00
40 shares National City Bank of New York)	
40 shares National City Co., at 393)	15,720 00
25 shares United States Trust Co., of New York, at 1475	36,875 00
Partnership interest in William Openhym & Sons	1,683,269 56
	$1,938,341 56

Deductions

Funeral expenses, etc., $180,137.91, prorated at .7539802 to	135,820 42
Net New York estate	$1,802,521 14

[fol. 21] On the 6th day of January, 1926, the order of the Surrogate of New York County confirming said transfer tax appraiser's report fixing the tax was signed by said Surrogate. A copy of said order is hereto annexed marked Exhibit I. The said transfer tax appraiser's report exempts the legacies bequeathed to the following beneficiaries:

Hudson Guild	$18,849 51
Copper Union	15,070 50
Educational Alliance	7,539 80
Hebrew Technical Institute for Boys	7,539 80
Hebrew Technical Institute for Girls	7,539 80
Trustees for the benefit of the Sociey of Ethical Culture	1,388,645 06

The reason why the deductions were prorated as .7535802 and exemptions be in the proportion which the value of the

the reason why exemption of the full amount of the bequests to the first beneficiaries first named was not given is because the New York laws requires that such deductions and

bequests to the five beneficiaries first named was not given is because the New York law requires that such deductions and exemption be in the proportion which the value of the New York taxable estate bears to the value of the decedent's entire estate. The reason for the exemptions above set forth was that the gifts were made for educational, charitable or religious purposes, as the case may be. The amount of tax determined payable, to the State of New York by the said Surrogate's order was $19,166.04.

18. Any material changes or developments in the New York appraisal and transfer tax will be brought before this Court by further supplementary stipulation.

19. On January 8, 1925, the executors exhibited to the Court of Probate for the District of Stamford a duly authenticated and exemplified copy of the last will and testament of said decedent and of said codicils and of the record of the proceedings proving and establishing same in the Surrogate's Court of New York County and requested said Court of Probate to order said copies to be filed and recorded that they might become a part of the files and records of said Court of Probate pursuant to the Statute and the Law of the State of Connecticut; and the executors requested that letters testamentary be granted to the executors named and appointed in said will. A copy of said application is hereto annexed marked Exhibit J.

[fol. 22] On said January 8, 1925, said Court of Probate ordered that public notice be given of a hearing on said petition of the executors.

On January 15, 1925, said Court of Probate upon return of notice and hearing had, ordered that said copies be filed and recorded.

On said January 15, 1925, the executors filed in said Court of Probate a bond in the sum of $1,000.00 to the State of Connecticut, with surety, conditioned that they should well and faithfully discharge the duties of their appointment and according to law.

On said January 15, 1925, the said Court of Probate, reciting the filing and record of said exemplified copies, the appearance of the executors and their acceptance of the trust, and the filing of said bond, made an order approving and accepting said bond and ordering it on file and record,

and approving and granting letters testamentary to said executors. A copy of said order is hereto annexed marked Exhibit K.

On said January 15, 1925, said Court of Probate made an order limiting six months from the date thereof for the presentation of claims of creditors of said decedent; ordering citation to be given to said creditors; ordering said executors to make or cause to be made an inventory of all the property, including choses in action, of the estate of said decedent; and to deposit the same with said Court of Probate (duly sworn to by the executors) within two months of said January 15, 1925; and appointing J. Howard Bogardus and Frederick C. Hall, both of said Stamford, appraisers on said estate, under oath, to appraise all of such property; and allowing the executors twelve months from said January 15, 1925 for the settlement of said estate.

On March 9, 1925, the said executors filed in said Court of Probate an inventory and appraisal duly sworn to of the assets of said estate; which inventory showed a total appraised value of $2,645,065.85 and consisted of the items set forth in Paragraph 3 above.

[fol. 23] 20. Of the legatees named in the will and in the two codicils thereto annexed, only Harriet O. Lassner, Aleen Lassner, Joseph Thellian and Josephine French are residents of the State of Connecticut, living in the Town of Stamford, Fairfield County in said State; all of the other legatees and devisees reside outside of the State of Connecticut.

21. All of the institutions named as legatees in the eleventh paragraph of said will are educational or charitable corporations organized under the laws of the State of New York and located in New York State.

22. The nature of the Society for Ethical Culture, incorporated under the laws of the State of New York, and the Ethical Culture School mentioned in the fourteenth paragraph of the will and the purpose to which the residuary gift made by the said fourteenth paragraph will be devoted are correctly set forth in detail in affidavits of Abraham L. Gutman and Robert D. Kohn, copies of which affidavits are submitted herewith marked Exhibits L and M respectively.

23. On the 1st day of September, 1925, the executors filed in the Probate Court for the District of Stamford and with the Tax Commissioner a statement under oath covering the property of said estate and the claimed deductions therefrom for the purpose of determining the succession tax, if any, due the State of Connecticut from said Estate.

24. Thereafter the Tax Commissioner of the State of Connecticut made a computation of the claimed succession tax due to the State of Connecticut from said estate and filed a copy of said computation with the Probate Court for the District of Stamford on the 15th day of September, 1925. A copy of said computation is annexed hereto marked Exhibit N.

25. Thereafter a hearing was held for the determination by the Probate Court for the District of Stamford of the amount of the succession tax due to the State of Connecticut from said estate, at which hearing the Tax Commissioner appeared by Farwell Knapp, his attorney, and the executors appeared by their attorneys and made objection to the determination of said tax at the amount computed [fol. 24] by the Tax Commissioner, $188,780.58, claiming that the interest in said partnership, the bonds listed in Exhibit A and the stock listed in Exhibit B other than such as were issued by Connecticut residents and corporations, are tangible property and located without the state of Connecticut at the death of the decedent, and were not subject to the jurisdiction of the State of Connecticut, and any attempt by the State of Connecticut to tax the transfer thereof other than the stock of Connecticut residents and corporations constituted the taking of property without due process of law in violation of the Federal Constitution; that even if said partnership interest and said bonds and stocks, or any of them, are considered to be intangible property, nevertheless they and the miscellaneous property due from non-residents of the State of Connecticut were not within the jurisdiction of the State of Connecticut for the purpose of taxation, and the taxation of the transfer thereof constituted the taking of property without due process of law in violation of the Federal Constitution; that the transfer of all the partnership interest and the bonds and stock aforesaid took place under and by virtue of the laws of the State of New York and the authority conferred upon

the Surrogates Court of New York County by such laws, and without any right, intervention or power in relation thereto vested in or exercised by the Probate Court for the District of Stamford or by the State of Connecticut, and any attempt by said Probate Court for the District of Stamford or by the State of Connecticut to assert jurisdiction or authority in relation to the said transfer amounts to a failure to give full faith and credit to the laws of the State of New York conferring jurisdiction and power upon the said Surrogate's Court and relating to the said transfer and that it accordingly is in violation of the Federal Constitution; and that the gifts made by the will of the decedent to educational and charitable corporations in New York and to trustees for the benefit of the Ethical Culture Society a charitable and religious corporation organized in New York, are, within the reasonable meaning of the Connecticut statute, exempt from succession tax thereon.

26. On December 4, 1925, the Probate Court for the District of Stamford made an order and decree approving the computation of succession tax due the State of Connecticut from the estate of decedent, filed in said Court by William [fol. 25] H. Blodgett on September 15, 1925, and ordering that the total amount of said tax be $188,780.58 as fixed by the computation of the Tax Commissioner filed as aforesaid, and directing the executors to pay the amount of said tax to the Treasurer of the State of Connecticut and exhibit to the Probate Court for the District of Stamford a proper receipt therefor.

27. On the 28th day of December, 1925, said executors, the plaintiffs in this action, took an appeal from said order and decree of said Probate Court for the District of Stamford next above referred to, and filed a bond pursuant to law to prosecute said appeal to effect.

28. On the 10th day of January, 1926, the plaintiffs filed in the Superior Court for the County of Fairfield, a statement of reasons of appeal, a copy of which is hereto annexed, marked Exhibit O.

29. Reference in detail to any of the Statutes of the State of New York, or to any of the decisions of the courts of record of said State, in so far as applicable to the issues of the case, may be made by either party in this proceeding

without formal proof thereof, and are herewith made part of this stipulation for the purposes of the record.

The parties hereto respectfully represent to the Court that the questions of law involved are as follows:

Questions of Law

1. Was the decedent's interest in the partnership at the time of his death, for the purpose of the Connecticut succession tax, to be treated as consisting of specific items of partnership property?

2. Was the decedent's interest in the partnership of William Openhym & Sons subject, in whole or in part, to the Connecticut succession tax?

3. If decedent's interest in said partnership consisted of specific items of partnership property, was any or were all of the following classes of property owned by the partnership subject to the Connecticut succession tax:

[fol. 26] (a) Real estate physically situated in New York.

(b) Merchandise, furniture and fixtures, physically situated in New York.

(c) Cash in partnership office in New York.

(d) Deposits in New York and foreign banks.

(e) Trade acceptances and notes and loans receivable, the physical evidences of the obligations thereof being physically situated in New York, and none of which were due from Connecticut residents or corporations.

(f) Advances to consignors secured by merchandise physically situated in New York, none of which advances were due from Connecticut residents or corporations.

(g) United States Liberty bonds physically situated in New York.

(h) Bonds of corporations not incorporated under the laws of the State of Connecticut, the bonds being physically situated in New York.

(i) Certificates of shares of stock of corporations not incorporated under the laws of the State of Connecticut, the certificates being physically situated in New York.

(j) Prepaid expenses and advances to travelers, none of which were due from Connecticut residents or corporations.

4. Were the United States Liberty Bonds mentioned in Exhibit A hereto annexed, and constituting a part of the "partner's investments" held by the partnership, referred to in paragraph 10 of the stipulation of facts, and physically situated in the State of New York at the time of the decedent's death, subject to the Connecticut succession tax?

5. Were Treasury certificates mentioned in Exhibit A hereto annexed, and constituting a part of the "partner's investment" held by the partnership, referred to in paragraph 10 of the foregoing stipulation of facts, and physically situated in the State of New York at the time of the decedent's death, subject to the Connecticut succession tax?

[fol. 27] 6. Were the stocks of corporations not organized under the laws of the State of Connecticut, which stocks constituted a part of the "partner's investments" referred to in paragraph 10 of the foregong stipulation of facts, the certificates of which were physically situated in the State of New York at the time of the decedent's death, subject to the Connecticut succession tax?

7. Were stocks of Connecticut corporations owned by the testator at the time of his death, the certificates of which were physically situated in New York State, subject to the Connecticut succession tax?

8. Were the deposits in banking institutions not situated in the State of Connecticut owned by the decedent at the time of his death, subject to the Connecticut succession tax?

9. Were the proceeds realized by the executors from a policy of life insurance on the life of the testator issued by the Mutual Life Insurance Company of New York, which policy was situated in New York State at the time of the decedent's death, and which policy was payable, by its terms to the executors at the death of the insured, subject to the Connecticut succession tax?

10. Were the coins and bank notes (described as cash on hand) belonging to the decedent at the time of his death and situated at that time in the State of New York, subject to the Connecticut succession tax?

11. Is the computation of the Connecticut succession tax made by the defendant as set forth in Exhibit N correct?

12. Is the succession tax imposed by the State of Connecticut on any of the foregoing items of property belonging to the decedent at the time of his death, a taking of property without due process of law in violation of Amendment XIV of the Constitution of the United States?

13. Is the succession tax imposed by the State of Connecticut on any of the foregoing items of property belonging to the decedent at the time of his death, a failure to give full faith and credit to the laws of the State of New York conferring jurisdiction and power upon said Surrogate's [fol. 28] Court in New York County and relating to said transfer, and therefore in violation of Article IV Section 1 of the Constitution of the United States?

14. Were the gifts made by the will of the decedent to educational and charitable corporations in New York exempt from the Connecticut succession tax?

15. Was the gift to trustees for the benefit of the Ethical Culture Society, a charitable and religious corporation organized in New York, exempt from the Connecticut succession tax?

The Plaintiffs, by Cummings & Lockwood, Their Attorneys. William H. Blodgett, Tax Commissioner. Frank E. Healey, Atty. Gen. Lucius F. Robinson, by Farwell Knapp, His Attorney.

EXHIBIT A

Bonds

$300 00	First Liberty 4¼ at 102 14/32	$307 31
	Accrued int. June 15-Sept. 23/24	3 54
288,600	Second Liberty 4¼ at 101 17/32	293,019 19
	Accrued int. May 15-Sept. 23, 1924	4,463 28
67,300	Third Liberty 4¼ at 102 7/32	68,793 22
	Accrued int. Sept. 15-23/24	63 56
277,550	Fourth Liberty 4¼ at 102 18/32	233,380 97
	Accrued int. Apr. 15-Sept. 23/24	4,325 03
10,000	Treasury Certificates 1952 4¼% at 105 24/32	10,575 00
	Accrued int. Apr. 15-Sept. 23/24	190 07

[fol. 29]

$400	National Weekly Corp. 6s	No value
300	Hubbard Heights Golf Club, inc. 2nd 7% mtge. bonds at 85	255 00
	Accrued int. June 1-Sept. 23/24	6 71
300	Hubbard Heights Golf Club, inc. 3rd mtge. 7% bonds at 85	255 00
	Accrued int. July 1-Sept. 23/24	4 96
500	Stamford Women's Club, Inc. 20 year 5s due 1939	No value
		$615,642 84

EXHIBIT B

Stocks

47 shs.	Canadian Bank of Commerce at 186½ Incorporated under the laws of Canada.	$8,765 50
50 "	Alaska & Northwestern Co. Incorporated under the laws of New Jersey.	No value
25 "	America International at 26 Incorporated under the laws of New York.	650 00
100 "	Central Union Trust Co. at 630 Incorporated under the laws of New York.	63,000 00
64 "	Each of Chase National Bank and Chase Securities Co. at 368 for 1 share of each Incorporated under the laws of New York.	23,552 00
65 "	Farmers Loan and Trust Co. at 696 Incorporated under the laws of New York.	45,240 00
18 "	First National Bank of New York at 1845 (including 18 shs. First Security Co.) Incorporated under the laws of New York.	33,210 00

20 shs.	Greenwich Bank at 385 ..... Incorporated under the laws of New York.	7,700 00
[fol. 30]		
42 "	Hanover National Bank at 880 .... Incorporated under the laws of New York.	36,960 00
40 "	National City Bank of New York at 395 ..... Incorporated under the laws of New York.	15,800 00
25 "	United States Trust Co. at 1480 ... Incorporated under the laws of New York.	37,000 00
5 "	National Weekly Corp. ..... Incorporated under the laws of New York.	No value
3 "	Stamford Theatre, Inc. at 40 ..... Incorporated under the laws of Connecticut.	120 00
154 "	United Shoe Machinery Corp. at 38⅞ ..... Incorporated under the laws of New Jersey.	5,986 75
		$277,984 25

EXHIBIT C

Other Miscellaneous Property in New York

1. National City Bank of New York savings account with accrued interest to date of death	$108 56
2. Life Insurance policy, Mutual Life Insurance Company of New York payable to estate, amount realized	14,820 11
3. Cash on hand at New York	287 48
4. Lassner account receivable	2,675 52
	$17,891 67

[fol. 31] EXHIBIT D

"New York, December 1st, 1923.

Messrs. William Openhym & Sons, 95 Madison Avenue, New York City.

DEAR SIRS: I beg to confirm our understanding that any securities contributed by me to the capital of the firm and referred to in the "Special Reserve Capital Account" are to be used whenever required for the purposes of the business, though it is understood that ordinarily they shall be held as a special reserve capital for use particularly at times when general credit conditions are disturbed, and for the purpose of maintaining securely the high credit of the firm.

In lieu of interest to me on the contribution of capital represented by such securities, it is understood that I am to receive any interest and dividends which may be paid on the securities. In all respects, however, such securities are to be at the risk of the business in the same manner as all other capital contributed by me.

Yours very truly, (Signed) Robert B. Hirsch."

[fol. 32] EXHIBIT E

SURROGATE'S COURT, COUNTY OF NEW YORK

In the Matter of Proving the Last Will and Testament of ROBERT B. HIRSCH, Deceased, as a Will of Real and Personal Property

To the Surrogate's Court of the County of New York:

The petition of Arthur Silbermann, residing at #939 Park Avenue, New York, N. Y., and Abraham L. Gutman, residing at No. 166 West 87th Street, New York, N. Y., respectfully states.

That your petitioners are two of the executors named in the Last Will and Testament of Deceased.

That said Last Will and Testament, to be herewith presented and hereby offered for probate, ralates to both

real and personal property and bears date February 28, 1917, and is signed at the end thereof by the said testator and by Harry C. Hutchins, residing at 58 West 59th Street, New York, N. Y., Julius Diehl, residing at 644 Riverside-Drive, New York, N. Y., and Harry H. Sturge, 26 Prospect Place, Hempstead, L. I., as subscribing witnesses.

That there is a Codicil to the said Will, which said Codicil bears date January 22, 1918, and is signed at the end thereof by the said testator, and by Harry C. Hutchins, residing at 780 Madison Avenue, New York City, Julius Diehl, 644 Riverside Drive, New York, N. Y., and Harry H. Sturge, 26 Prospect Place, Hempstead, L. I., and that a further Codicil to said Will bears date January 23, 1919, and is signed at the end thereof by the said testator and by Harry C. Hutchins, residing at 21 West 58th Street, [fol. 33] New York, N. Y., Harry H. Sturge residing at 26 Prospect Place, Hempstead, L. I., and Charles M. Funk residing at 1054 Simpson Street, New York, N. Y.

That Petitioners do not know of any other Codicil to said Last Will and Testament, nor is there any to the best of their information and belief.

That the said deceased was at the time of his death a resident of the County of Fairfield, State of Connecticut, and died at Stamford Connecticut on the 23rd day of September 1924.

That at the time of decedent's death he left personal property exceeding in value the sum of Ten Thousand ($10,000.00) Dollars within the County and State of New York, said property consisting of negotiable bonds and stocks. Decedent was in business at No. 95 Madison Avenue, New York, N. Y.

That the names of all the heirs and all the next of kin of said testator, each person designated in the Will and Codicils herewith presented and hereby offered for probate as executor, testamentary trustee or guardian; and their residences and post office addresses are hereinafter mentioned in subdivisions, A, B, C and D hereof, as follows:

* * * * * * *

That no petition for the probate of the will herewith presented and hereby offered for probate, or for letters of

administration on said estate, has been heretofore filed in this or any other Surrogate's Court of this state.

That there is no person designated in the will and Codicil herewith presented and hereby offered for probate as executor, testamentary trustee or guardian, except as hereinbefore mentioned.

That there is no person named as executor, testamentary trustee, guardian, devise- or beneficiary in any other will of the same testator filed in the Surrogate's office of the County of New York.

That the names and post office addresses of the devisees, legatees and other beneficiaries named in the Will and Codicil herewith presented and hereby offered for probate, are as follows:

* * * * * * *

[fol. 34] That the value of the entire estate of the decedent is over Ten Thousand ($10,000.00) Dollars.

That the value of the real property in this State of which the testator died seized is No Dollars and that the value of the personal property of which said testator died possessed is over Ten Thousand ($10,000.00) Dollars.

That there are no persons interested in this proceeding other than those hereinbefore mentioned.

Wherefore your petitioner prays—

That a citation to show cause herein to the persons hereinbefore named, described and included in subdivisions, A. B, C and D hereof, citing them to show cause why the last will and testament herewith presented and hereby offered for probate should not be admitted to probate;

That an order be granted directing the service of the citation personally without the State or by publication upon the persons hereinbefore named, described and included in subdivisions A, B, C and D hereof who are not residents of the state of New York, and also upon the persons hereinbefore described and included in those subdivisions who and whose names or residences and post office addresses are unknown and cannot be ascertained; and

That the last will and testament herewith presented and hereby offered for probate may be admitted to probate as

a will of real and personal property and that letters testamentary may be issued to the executors who may qualify thereunder.

Dated, New York, October 15, 1924.

(Signed) Arthur Silbermann, Abraham L. Gutman, Petitioners.

(Verified by Arthur Silbermann and Abraham L. Gutman, October 15, 1924.)

[fol. 35] EXHIBIT F

AT A SURROGATE'S COURT HELD IN AND FOR THE COUNTY OF NEW YORK AT THE SURROGATES' OFFICE IN SAID COUNTY, ON THE 28TH DAY OF NOVEMBER, IN THE YEAR 1924

Present: Honorable James A. Foley, Surrogate.

In the Matter of Proving the Last Will and Testament and Codicils of ROBERT B. HIRSCH, Deceased

Decree Admitting Will to Probate

The citation herein having been duly issued, served, and returned, and the Surrogate having, on his own motion, appointed Joseph F. Moss, Esq., special guardian of the unknown parties to this proceeding who may be infants or incompetents, the allegations of the parties appearing having been heard, and the proofs having been duly taken by the Surrogate, among other things as to the execution of said instrument, bearing date February 28th, 1917, together with two codicils thereto bearing date January 22nd, 1918, and January 23rd, 1919, respectively, and the probate of the said Will not having been contested, and it appearing to the Surrogate that the Will was duly executed, and that the testator, at the time of executing it, was in all respects competent to make a Will and not under restraint.

It is ordered, adjudged and decreed, that the instruments offered for probate herein be and the same hereby are admitted to probate as the Last Will and Testament of the said Deceased, valid to pass real and personal property,

[fol. 36] and that letters testamentary be issued thereon to the executors who may qualify thereunder.

It is further ordered and decreed, that Joseph F. Moss, Esq., the special guardian herein, is hereby allowed One Hundred dollars for compensation for his services.

James A. Foley, Surrogate.

EXHIBIT G

The People of the State of New York, by the grace of God free and independent, to all to whom these present- shall come or whom they may concern, send greeting:

Know ye, that at the County of New York, on the 28th day of November, in the year of our Lord one thousand nine hundred and twenty-four, before Honorable John P. O'Brien, a Surrogate of our said county, the last will and testament of Robert B. Hirsch, deceased, was proved, and is now approved and allowed by us; and the said deceased having been at the time of his death a resident of Fairfield County, Conn., leaving property in the County of New York, by means whereof the proving and registering said will and the granting administration of all and singular the goods, chattels and credits of the said testator and also the auditing, allowing and final discharging the account thereof doth belong unto us, the adminstration of all and singular goods, chattels and credits of the said deceased in any way concerning his will, is granted unto Charles Moebius of Avon-by-the-Sea, N. J.

Franklin C. Lewis, Arthur Silbermann, Abraham L. Gutman and Joseph Plaut, all of the City of New York, N. Y., executors in the said will named, they being duly sworn, well, faithfully and honestly to discharge the duties of such executors.

[fol. 37] In testimony whereof, we have caused the seal of office of the Surrogate's Court of the County of New York to be hereunto affixed.

Witness, Honorable John P. O'Brien, a Surrogate of our said County of New York at said county, the 28th day of November, in the year of our Lord one thousand nine hundred and twenty-four.

Martin G. McCue, Clerk of the Surrogate's Court.

(Seal.)

Exhibit H

Surrogate's Court, County of New York

In the Matter of the Appraisal under the Transfer Tax Law of the Estate of Robert B. Hirsch, Deceased

To the Surrogate Court of the County of New York:

I, M. F. Loughman, Transfer Tax Appraiser, having been designated by Hon. John P. O'Brien, Surrogate of the County of New York, by an order duly made and entered on the 19th day of January, 1925, to appraise the estate of the above-named decedent, pursuant to the provisions of the Law relating to taxable transfers of property, and the statutory notice by mail having been duly given herein to all the persons entitled thereto as provided in Section 230 [fol.38] of the Tax Law as appears by copy of such notice and affidavit of mailing thereof hereunto annexed, and having held an appraisal on the 21st day of December, 1925, at the Office of the Transfer Tax Appraiser for the County of New York, and having heard the allegations and proofs of the parties then and there appearing before me and offering the same, and having given due consideration to the affidavits and other papers submitted herein, and having made due and careful inquiry into all the matters and things brought before me in this proceeding, do now make and file the following report:

First. I report that the decedent herein died a non-resident of the State of New York on the 23rd day of September, 1924, leaving a Last Will and Testament, copy of which is hereunto annexed, which was duly admitted to probate by the Surrogate's Court of New York County on the 28th day of November, 1924, and that thereafter on the 28th day of November, 1924, Letters Testamentary upon the estate of the said decedent were duly issued by this Court to Abraham L. Gutman, 166 West 87th Street, New York City, Arthur Silbermann, 930 Park Avenue, New York City, Charles Moebius, Avon, New Jersey, Joseph Plaut, 310 West 86th Street, New York City, Franklin C. Lewis, 5 West 65th Street, New York City, as executors.

Second. I further report the following appearances in this proceeding: Charles A. Curtin, Esq., Attorney for

State Tax Commission, 2220 West 40th Street, New York City. Shearman & Sterling, Esqs., Attorneys for Executors, 55 Wall Street, New York City. Cohen, Gutman & Richter, Esqs., Attorneys for Executors, 111 Broadway, New York City.

[fol. 39] Third. I further report that I appraised the estate of the above named non-resident decedent, at its fair market value as of the 23rd day of September, 1924, the date of decedent's death, subject to tax in this proceeding, pursuant to Section 221-c, as follows:

List of Items Taxable in New York

25	shares	American International Corp. at 27	$675 00
100	"	Central Union Trust Co. of New York, at 630	63,000 00
64	"	Chase Securities at 363	23,232 00
64	"	Chase National Bank	
65	"	Farmers Loan & Trust Co., at 695	45,175 00
18	"	First National Bank of New York	33,435 00
18	"	First Security Co., at 1867½	
42	"	Hanover National Bank at 880	36,960 00
40	"	National City Bank of New York	15,720 00
40	"	National City Co., at 393	
25	"	United States Trust Co. of New York, at 1475	36,875 00
		Partnership interest in William Openhym & Sons	1,683,269 56
			$1,938,341 56

Deductions

Funeral expenses, etc., $180,137.91, pro rated at .7539802 to	135,820 42
Net New York estate	$1,802,521 14

Fourth. I further report all the beneficiaries as entitled at the time of decedent's death to an interest in this estate pursuant to the provisions of the said decedent's last will and testament, the relationship of such persons to decedent,

the amount of the share or interest of each, and whether such share or interest is taxable in this proceeding, to be as hereinafter set forth:

[fol. 40]

Beneficiaries		Amount of *in* interest in New York estate	Exemption	Taxable
Harriet O. Lassner (not related):				
Life estate in	$300,000.			
Present Value	$163,575.			
Pro rated to		$123,332.31	0	123,332.31
Remainder	$136,425.00			
Pro rated to	$102,861.75			
Passes as below.				
Marcelle Humbert (second cousin):				
Life estate in	$12,500			
Present value	$9,047.90			
Pro rated to		6,821.26	0	6,821.26
Remainder	$3,453.49			
Pro rated to	$2,603.49			
Passes as below.				
Laure Choffin (second cousin):				
Life estate in	$12,500			
Present value	$8,353.00			
Pro rated to		6,298.00	0	6,298.00
Remainder	$4,147.00			
Pro rated to	$3,126.75			
Passes as below.				
Gustave Hirsch (first cousin):				
Legacy of	$5,000.00			
Pro rated to		3,769.90	0	3,769.90
Eugene Hirsch (first cousin):				
Legacy	$5,000			
Pro rated to		3,769.90	0	3,769.90
[fol. 41] Nora Ullman (first cousin):				
Legacy of	$5,000.00			
Pro rated to		3,769.90	0	3,769.90
Lotta O. Rouff (not related):				
Life estate in	$10,000			
Present value	$6,066.00			
Pro rated to		4,573.64	0	4,573.64
Remainder	$3,934.00			
Pro rated to	$2,966.16			
Passes as below.				
Josephine Thellian (not related):				
Life estate in	$10,000			
Present value	$5,185.00			
Pro rated to		3,909.39	0	3,909.39
Remainder	$4,815.00			
Pro rated to	$3,630.41			
Passes to residue.				
Hudson Guild:				
Legacy of	$25,000.00			
Pro rated to		18,849.51	$18,849.51	0
Cooper Union for the Advancement of Science and Art:				
Legacy of	$20,000.00			
Pro rated to		15,079.50	15,079.50	0

Beneficiaries		Amount of *in* interest in New York estate	Exemption	Taxable
Educational Alliance:				
Legacy of	$10,000.00			
Pro rated to		7,539.80	7,539.80	0
[fol. 42] Hebrew Technical Institute for Boys:				
Legacy of	$10,000.			
Pro rated to		7,539.80	7,539.80	0
Hebrew Technical Institute for Girls:				
Legacy of	$10,000.00			
Pro rated to		7,539.80	7,539.80	0
Lilly Oppenheimer (not related):				
Life estate in	$25,000.			
Present value	$14,577.			
Pro rated to		10,990.77	0	10,990.77
Remainder	$10,423.00			
Pro rated to	$7,858.74			
Passes to residue.				
Franklin C. Lewis (not related):				
Legacy of	$15,000.00			
Pro rated to		11,309.71	0	11,309.71
E. L. Blun (not related):				
Legacy of	$1,500.00			
Pro rated to		1,130.98	0	1,130.98
J. Bernard (not related):				
Legacy of	$965.00			
Pro rated to		727.59	0	727.59
J. Dempsey (not related):				
Legacy of	$1,200.00			
Pro rated to		904.76	0	904.76
[fol. 43] G. B. Downer (not related):				
Legacy of	$700.00			
Pro rated to		527.79	0	527.79
W. Drake (not related):				
Legacy of	$800.00			
Pro rated to		603.18	0	603.18
A. Fyfe (not related):				
Legacy of	$900.00			
Pro rated to		678.58	0	678.58
A. L. Golsch (not related):				
Legacy of	$800.00			
Pro rated to		603.18	0	603.18
H. C. Hutchins (not related):				
Legacy of	$2,000.00			
Pro rated to		1,507.98	0	150,7.98
H. L. Larrabee (not related):				
Legacy of	$1,350.00			
Pro rated to		1,017.87	0	1,017.87
E. P. Leonard (not related):				
Legacy of	$1,350.00			
Pro rated to		1,017.87	0	1,017.87
L. J. Levy (not related):				
Legacy of	$1,000.00			
Pro rated to		753.98	0	753.98
C. Moebius (not related):				
Legacy of	$1,000.00			
Pro rated to		753.98	0	753.98
[fol. 44] E. Maxon (not related):				
Legacy of	$1,300.00			
Pro rated to		980.17	0	980.17
B. E. Marks (not related):				
Legacy of	$1,125.00			
Pro rated to		848.22	0	848.22

Beneficiaries		Amount of *in* interest in New York estate	Exemption	Taxable
P. Reid (not related):				
Legacy of	$750.00			
Pro rated to		565.49	0	565.49
J. C. Strong (not related):				
Legacy of	$700.00			
Pro rated to		527.79	0	527.79
R. M. Wood (not related):				
Legacy of	$900.00			
Pro rated to		678.58	0	678.58
J. Wolf (not related):				
Legacy of	$750.00			
Pro rated to		565.49	0	565.49
Executors, for benefit of forty beneficiaries of the 5% class:				
Total legacies	$13,905.70			
The pro rated amount of each legacy being less than $500.00 total amount of pro rated legacies		$10,484.61	$10,484.61	0
Josephine W. French (not related):				
Legacy of	$20,000.00			
Pro rated to		15,079.60	0	15,079.60
[fol. 45] Ethel C. Bratton (no relation):				
Legacy of	$15,000.00			
Pro rated to		11,309.71	0	11,309.71
Alice M. Paine (not related):				
Legacy of	$10,000.00			
Pro rated to		7,539.80	0	7,539.80
Irwin A. Oppenheimer (not related):				
Life estate in	$20,000.00			
Present value	11,164.00			
Pro rated to		8,417.43	0	8,417.43
Remainder	$8,836.00			
Pro rated to	$6,662.17			
Passes to residue.				
Executors, for benefit of a person of the 5% class: Remainder after life estate of Harriet O. Lassner		102,861.75	0	102,861.75
Executors, for benefit of a person of the 5% class: Remainder after life estate of Marcelle Humbert		2,603.49	0	2,603.49
Executors, for the benefit of a person of the 5% class: Remainder after life estate of Laure Choffin		3,126.76	0	3,126.76
Executors, for the benefit of a person of the 5% class: Remainder after life estate of Lotto O. Rouff		2,966.16	0	2,966.16
[fol. 46] Trustees, for the benefit of the Society for Ethical Culture: Residue		$1,388,645.06	$1,388,645.06	0

Respectfully submitted.

M. F. Loughlin, Appraiser.

Dated New York, N. Y., Dec. 31, 1925.

Exhibit I

At a Surrogate's Court Held in and for the County of New York, at the Hall of Records, in the Borough of Manhattan, City of New York, on the 6th day of January, 1926

Present: Hon. John P. O'Brien, Surrogate.

In the Matter of the Transfer Tax upon the Estate of Robert B. Hirsch, Deceased

Order Assessing Tax

On reading the report filed on the 31st day of December 1925, of M. F. Loughman, Esq., the appraiser appointed by order of this court dated the 19th day of January, 1925, and it appearing that the said decedent died on the 23rd day of September, 1924, it is

[fol. 47] Ordered and adjudged that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the act relating to taxable transfers and the tax to which the transfers are liable are as follows:

Beneficiaries	Amount received	Amount of exemption	Taxable amount	Tax assessed
Harriet O. Lassner	$123,332.31	0	$123,332.31	$7,383.26
Marcelle Humbert	6,821.26	0	6,821.26	341.06
Laure Choffin	6,298.00	0	6,298.00	314.90
Gustave Hirsch	3,769.90	0	3,769.90	188.50
Eugene Hirsch	3,769.90	0	3,769.90	188.50
Nora Ullman	3,769.90	0	3,769.90	188.50
Lotta O. Rouff	4,573.64	0	4,573.64	228.68
Josephine Thellian	3,909.39	0	3,909.39	195.47
Lillie Oppenheimer	10,990.77	0	10,990.77	549.54
Franklin C. Lewis	11,309.71	0	11,309.71	565.49
E. L. Blun	1,130.98	0	1,130.98	56.55
J. Bernard	727.59	0	727.59	36.38
J. Dempsey	904.76	0	904.76	45.24
G. B. Downer	527.79	0	527.79	26.39
W. Drake	603.18	0	603.18	30.16
A. Fyfe	678.58	0	678.58	33.93
A. L. Golsch	603.18	0	603.18	30.16
H. G. Hutchins	1,507.98	0	1,507.98	75.40
H. L. Larrabee	1,017.87	0	1,017.87	50.89
E. P. Leonard	1,017.87	0	1,017.87	50.89
L. J. Levy	753.98	0	753.98	37.70
C. Moebius	753.98	0	753.98	37.70
E. Maxon	980.17	0	980.17	49.01

Beneficiaries	Amount received	Amount of exemption	Taxable amount	Tax assessed
B. E. Marks	848.22	0	848.22	42.41
P. Reid	565.49	0	565.49	28.27
J. C. Strong	527.79	0	527.79	26.39
B. M. Wood	678.58	0	678.58	33.93
J. Wolf	565.49	0	565.49	28.27
Josephine W. French	15,079.60	0	15,079.60	753.98
Ethel C. Bratton	11,309.71	0	11,309.71	565.49
Alice M. Paine	7,539.80	0	7,539.80	376.99
Irwin A. Oppenheimer	8,417.43	0	8,417.43	420.87
[fol. 48] Executors for benefit of a person of the 5% class, remainder after life estate of Harriet O. Lassner	102,861.75	0	102,861.75	5,950.32
Executors for benefit of a person of the 5% class, remainder after life estate of Marcelle Humbert	2,603.49	0	2,603.49	130.17
Executors for benefit of a person of the 5% class, remainder after life estate of Laure Choffin	3,126.76	0	3,126.76	156.34
Executors for benefit of a person of the 5% class, remainder after life estate of Lotta O. Rouff	2,966.16	0	2,966.16	148.31

John P. O'Brien, Surrogate.

Exhibit J

Estate of Robert B. Hirsch, Late of Stamford, in said District, Deceased

To the Court of Probate for the District of Stamford:

The undersigned, Charles Moebus, Arthur Silberman, Joseph Plaut, Franklin C. Lewis and Abraham L. Gutman, respectfully represent: That said Robert B. Hirsch was domiciled in said Stamford at the time of his decease; that he died testate on or about the 23rd day of September A. D. 1924 at Stamford, Connecticut, aged about 65 years, leaving real and personal estate.

[fol. 49] That the real estate is situated in the Town of Stamford, Connecticut, and is of the estimated value of Thirty Thousand Dollars ($30,000.00), and that the value of all the personal estate wherever situated (whether within or without this State) exceeds the sum of One Hundred Thousand Dollars ($100,000).

And that according to their best belief and knowledge the decedent never married and the next of kin and heirs at law of said deceased and the only persons other than creditors interested in said estate and in the settlement thereof none of whom (except minors or as herein stated) are under any disability or incapacity, are:— the persons named as such heirs and next of kin in the petition which forms part of the exemplified copy of the Last Will and Testament and the record of the proceedings proving and establishing the Will of said Robert B. Hirsch in the Surrogates' Court of the County of New York in the State of New York filed herewith.

And the undersigned herewith exhibit a duly authenticated and exemplified copy of the Last Will and Testament of said deceased bearing date the 28th day of February, 1917 and a codicil thereto dated the 22nd day of January, 1918 and a further codicil thereto dated the 23rd day of January 1919 and of the record of the proceedings proving and establishing the same in the Surrogates Court of New York County in the State of New York being a Court of Competent jurisdiction in said State of New York and requests this Court to order said copies to be filed and recorded that they may become a part of the files and records of this Court pursuant to the statute and the law of the State of Connecticut and that letters testamentary be granted to the executors therein named and appointed.

Dated at New York, this 30th day of December 1924.

Arthur Silbermann, Franklin C. Lewis, Joseph Plaut, Chas. Moebius, Abraham L. Gutman.

[fol. 50] State of New York,
County of New York, ss:

January 7, 1925.

Personally appeared Abraham L. Gutman and made oath to the truth of the allegations in the foregoing petition before me.

Bessie Aaronson, Notary Public, Kings County. Clerk's No. 93. Register's No. 6097. N. Y. Co. Cl'k's No. 203. Reg. No. 6167. Commission expires March 31, 1926. (Seal.)

(County Clerk's Certificate Attached.)

Exhibit K

At a Court of Probate Held at Stamford, within and for the District of Stamford, on the 15th Day of January, A. D. 1925

Present: Hon. Floyd B. Bartram, Judge.

Estate of Robert B. Hirsch, Late of Stamford, in said District, Deceased

A duly authenticated and exemplified copy of the last will and testament of said deceased, and two codicils thereto and of the record and proceedings proving and establishing the same out of this State in and by a Court of competent jurisdiction, having been duly filed and recorded in this Court, on the 15th day of January, 1925, Charles Moebius, Arthur Silbermann, Joseph Plaut, Franklin C. Lewis and Abraham L. Gutman, all of the City and State of New York, who are therein named and appointed as Executors thereof this day appeared in Court, accepted said trust, and gave bond, dated the 15th day of January 1925, in the sum of one thousand (1,000) dollars, with Harriet O. Lassner, of Stamford, Fairfield County, State of Connecticut, as surety for the faithful discharge of the duties of said trust and appointment according to law.

[fol. 51] The amount of said bond being equal to twice the amount of the debts due by said deceased as estimated by this Court, and said will directing that no bonds be required of said Executors, said bond is approved and accepted by this Court and ordered on file and record.

And Emil Berolzheimer, who is also named and appointed in said will an Executor thereof having died, this Court doth thereupon approve and grant Letters Testamentary to said Charles Moebius, Arthur Silbermann, Joseph Plaut, Franklin C. Lewis and Abraham L. Gutman as such Executors.

Floyd B. Bartram, Judge.

EXHIBIT L

STATE OF NEW YORK,
County of New York, ss:

Abraham L. Gutman, being duly affirmed, deposes and says:

I am one of the executors and trustees named in the will of Robert B. Hirsch, the above named decedent.

As the Ethical Culture School, owned and conducted by the Society for Ethical Culture, maintains free scholarships for poor children without distinction as to race, creed or religion to the extent of one-third of the pupils of said School, the trustees named in the residuary clause of said Will of Robert B. Hirsch must pay to the said Society for Ethical Culture the income of said residuary estate for the purpose described in said residuary clause, to wit:—to apply the net income of said trust fund to the free education of poor and deserving children in the Ethical Culture School, now maintained by The Society for Ethical Culture in the City of New York, or any other school carrying out the same purpose which may, at any time, be owned or maintained by or associated or affiliated with said Society for Ethical Culture, and also to the free education, maintenance and support of poor and deserving [fol. 52] young men and women who may desire to fit themselves for the career of teachers and who shall have displayed to the satisfaction of the directors of the said Society for Ethical Culture sufficient capacity for such career.

The purpose for which said Society for Ethical Culture is organized, as described in its certificate of incorporation and its amended certificate of incorporation, are set forth in the annexed affidavit of Robert D. Kohn, the President of said Society, to which deponent herewith refers.

On behalf of the executors and trustees of the will of said Robert B. Hirsch, deponent respectfully claims that said residuary estate is exempt from inheritance tax under the laws of the State of New York.

Abram L. Gutman.

Affirmed before me this 1st day of July, 1925. Wm. V. Goldberg, Notary Public, New York County. Clerk's No. 131. Register's No. 7006. Certificate filed in Kings County. Clerk's No. 2. Register's No. 7001. Certificate filed in Bronx County. Clerk's No. 35. Register's No. 2799. Commission Expires March 30, 1927.

EXHIBIT M

STATE OF NEW YORK,
County of New York, ss:

Robert D. Kohn, being duly sworn, deposes and says:

I am the President of the Society for Ethical Culture in [fol. 53] the City of New York. Said Society is the owner of the Ethical Culture School, the said school being one of the activities of the said Society. The school is not separately incorporated.

The said Society for Ethical Culture was incorporated on or about the 21st day of February, 1877, under the laws of the State of New York pursuant to an act passed April 12th, 1848, as amended by subsequent acts of the legislature. A copy of the certificate of incorporation is hereto annexed.

Said certificate of incorporation was amended by certificate filed on or about the 20th day of May, 1910, and a copy of said amended certificate of incorporation is hereto annexed.

The original certificate of incorporation provides amongst other things that the Society was organized for the purpose of mutual improvement in religious knowledge and the furtherance of religious opinion, and that the object shall be accomplished in part by a series of weekly lectures in which the principles of ethics shall be developed, propagated and advanced amongst adults, and in part by the establishment of a school or schools wherein a course of moral instruction shall be supplied for the young.

The amended certificate of incorporation above referred to, Paragraph III, provides amongst other things that "Interpreting the word religion to mean fervent devotion to the highest moral ends our Society is distinctly a religious

body." The said amended certificate provides also for the "maintenance of a meeting house or meeting houses in which the Society and its members and guests may from time to time gather for ethical culture, religious inspiration and the solemnization and celebration of marriages and other events of spiritual significance and as a civic forum for the discussion of questions of social and political ethics; said meeting house to be the home of the Sunday School of the Society and of all other associations, groups classes, clubs and unions affiliated with the Society and intending to further its spiritual and specifically educational aims."

The said certificates and by-laws of the said Society provide that one of the primary objects of the said Society is "To increase among Men the Knowledge, the Love and the Practice of the right." In accordance with the by-laws the Society maintains a public platform and elects from time to time senior leader and leaders upon whom devolve the functions of public teachers of moral, the super-[fol. 54] vision of ethical classes the solemnization of marriages, officiating at funerals, services in connection with the naming of children, and the leadership of the Sunday School. The right to solemnize marriages is granted to the said senior leader and three leaders of the Society by the statutes of the State of New York, Domestic Relations Law (Section 11, Subdivision I, amended by the laws of 1920, Chapter 231).

The said Society for Ethical Culture also engages in the following charitable and benevolent activities among others:—It conducts and maintains a fresh air home at Orange County, New York, where poor and deserving children, without distinction as to race, creed or religion, are given outings and vacations during the summer season of each year; it maintains a corps of nurses who are regularly engaged in so-called district nursing in the Borough of Manhattan, City of New York, giving aid and comfort to many poor families and assisting them in rehabilitating themselves.

The residuary estate disposed of by the will of Robert B. Hirsch, the above named testator, is bequeathed to trustees named in said will for the following purposes:—to invest the same and apply the net income thereof to the free education of poor and deserving children in the Ethical Culture

School, now maintained by The Society for Ethical Culture in the City of New York or any other school carrying out the same purposes which may, at any time, be owned or maintained by or associated or affiliated with said Society for Ethical Culture, and also to the free education, maintenance and support of poor and deserving young men and women who may desire to fit themelves for the career of teachers and who shall have displayed to the satisfaction of the directors of the said Society for Ethical Culture sufficient capacity for such career, etc.

As the Ethical Culture School, owned and conducted by said Society for Ethical Culture, maintains free scholarships for poor children without distinction as to race, creed or religion to the extent of one-third of the pupils of said school, the trustees named in said will of Robert B. Hirsch must pay to the said Society for Ethical Culture for the purpose of free schoolarships in said school above described, the income of the trust fund of said residuary clause.

[fol. 55] Deponent respectfully maintains that such payment is equivalent to a gift by the testator directly to the Society for such free scholarship purpose and that therefore, the said residuary estate is exempt from interitance tax under statutes of the State of New York.

Robert D. Kohn.

Sworn to before me this 9 day of June, 1925. Maud M. Acker, Notary Public, New York Co. County Clerk's No. 17. Register No. 7032. (Seal.)

Certificate of Incorporation of The Society for Ethical Culture

I

This instrument certifies that we, the undersigned, under and pursuant to the Act of the Legislature of the State of New York, passed on the 12th day of April, 1848, entitled "An Act for the Incorporation of Benevolent, Charitable, Scientific and Missionary Society," and the several acts amendatory thereof, and particularly the act passed by said Legislature on the 10th day of April, and the 11th day of May, 1872, amending and extending the act so as to include

societies having for their purpose mutual improvement in religious knowledge or the furtherance of religious opinion, or for any two or more combined, do associate ourselves together to form a society for the purpose hereinafter set forth.

II

The name of this Society will be The Society for Ethical Culture.

[fol. 56]

III

The object of said Society will be the mutual improvement in religious knowledge and the furtherance of religious opinion, which shall be in part accomplished by a system of weekly lectures, in which the principles of ethics shall be developed, propogated and advanced among adults, and in part by the establishment of a school or schools wherein a course of moral instructions shall be supplied for the young.

IV

The number of Trustees of said Society will be fifteen.

V

The names of the Trustees who are to manage the affairs of said Society for the first year are as follows: Joseph Seligman, Albert A. Levi, Henry Friedman, Edward Lauterback, William Byfield, Joseph Sidenberg, Max Abendheim, Max Landman, Emil Salinger, Mayer Jonasson, Jacob Settheimer, Jr., Samuel B. Speyer, Samuel A. Solomons, Julius Rosenbaum, Marcus Goldman.

VI

The principal office or place of meeting of the Society will be situated in the City of New York.

In witness whereof, we do hereunto subscribe our names this 21st day of February, 1877.

The certificate is subscribed and acknowledged by the trustees, and a consent to its filing is endorsed thereon by a Judge of the Supreme Court.

We, the undersigned, a majority of the Directors of the Society for Ethical Culture in the City of New York, a membership incorporation under Chap. 319 of the Laws of [fol. 57] 1848, as amended by Chapters 209 and 649 of Laws of 1872, desiring to extend its corporate purpose pursuant to Section 4 of the Membership Corporations Law, do hereby certify as follows:

I. The name of the corporation is the Society for Ethical Culture in the City of New York.

II. The purpose for which it was incorporated "is mutual improvement in religious knowledge and the furtherance of religious opinion which shall be accomplished by a system of weekly lectures in the principles of ethics established, developed, propogated and advanced among adults and in part by the establishment of a school or schools wherein a course of moral instruction shall be supplied for the young."

III. The purpose- to which it is desired to extend i-s corporate purposes are as follows:

"I. The furtherance of all aims, objects, purposes and basic principles of the Society as declared and reflected in its basis of Union; and the development of all proper means to that end including those particularly specified in said Basis of Union, and the maintenance and development of the existing school system of the Ethical Culture Schools. The said Basis of Union is as follows:

'I. We aim to increase among men the knowledge, the love and the practice of the right.

II. As means to this end, our Society devotes itself to the following specified objects: (1) Meetings in public at stated intervals and the maintenance of a public platform for the enforcement of recognized standards of right, the development of new and higher conceptions of duty and the quickening of the moral life. (2) Systematic moral instructions of the young founded on true pedagogic principles. (3) Promotion of continued self education among adults by forming classes and groups for study and mutual inspiration. (4) General educational reform, with main stress on the formation of character as the purpose of all

education. (5) Earnest encouragement of all practical efforts which tend to elevate the condition of the wage earners. (6) Such other specific objects as the Society may from time to time agree upon.

[fol. 58] III. Interpreting the word of religion to mean fervent devotion to the highest moral ends, our Society is distinctly a religious body. But toward religion as a confession of faith in things super-human the attitude of the Society is neutral. Neither acceptance nor denial of any theological doctrine disqualifies for membership.

IV. The supremacy of the moral end is implied as a cardinal truth in the demand for ethical culture.'

2. The maintenance of a meeting house or meeting houses in which the Society and its members and guests may from time to time gather for ethical culture, religious inspiration and the solemnization and celebration of marriages and other events of spiritual significance and as a civic forum for the discussion of questions of social and political ethics; said meeting house to be the home of the Sunday School of the Society and of all other associations, groups, classes, clubs and unions affiliated with the Society and intending to further its spiritual and specifically educational aims."

IV. Such extension has been duly authorized by a resolution adopted by the concurring vote of a majority of the members of the corporation present at a special meeting of the corporation *present at a special meeting of the corporation* duly called for that purpose as more fully appears by the certificate of the President and Secretary of the Corporation hereto annexed and filed herewith.

In witness whereof we have made, signed and executed this certificate in duplicate this 20th day of May, 1910.

Edwin R. A. Seligman, John Frankenheimer, Robert B. Hirsch, Morris Cooper, Robert D. Kohn, Abm. L. Gutman, Joseph Plaut, Arthur K. Kuhn, B. Edmund David, Julius Kaufmann, Walter H. Liebmann, Francis Hellman, Julius Oppenheimer, Leo. G. Rosenblatt, Julius Henry Cohn, Alexander H. Bing, Rolfe Floyd, M. D. Rothschild.

[fol. 59] State of New York
County of New York, ss:

On this 25th day of May, 1910, before me personally came Edwin R. A. Seligman, John Frankenheimer, Robert B. Hirsch, Morris Cooper, Robert D. Kohn, Abraham L. Gutman, and on the 27th day of May 1910, before me personally came Joseph Plaut, Arthur K. Kuhn, Walter H. Liebmann, Julius Henry Cohen, Alexander M. Bing and Rolfe Floyd and on the 28th day of May, 1910, before me personally came B. Edmund David, Julius Kaufman, Francis Hellman, Julius Oppenheimer and Leo G. Rosenblatt, and on the 3-st day of May, 1910, before me personally came M. D. Rothschild to me severally known to be the persons described in and who made and signed the foregoing certificate and severally asknowledged to me that they made, signed and executed the same for the purpose herein set forth.

E. Falk, Notary Public, N. Y. County.

Exhibit N

E-16 10M 12-18-24

State of Connecticut

[Seal]

Inheritance and Succession Tax

Estate of Robert B. Hirsch

To the Court of Probate for the District of Stamford:

The subscriber, William H. Blodgett, Tax Commissioner of the State of Connecticut, a person interested in said estate, represents that he has prepared the attached computation of said inheritance and succession tax and that he has sent a copy of said computation and of this application [fol. 60] to the executors addressed to them at Stamford, Connecticut, c/o Messrs. Cummings & Lockwood, Attorneys.

Wherefore, said applicant prays this Court to assign a time and place for a hearing upon said computation and to

assertain if any tax is due to the State of Connecticut from said estate, and if any is due, the amount thereof.

Dated this 15th day of September A. D. 1925.

William H. Blodgett, Tax Commissioner, by Farwell Knapp, Assistant Tax Commissioner.

Computation of the Succession Tax

Estate as per final appraised value of Connecticut inventory, (Schedule A Executor's Return)	$2,645,065 85	
Plus taxable additions and gains (Schedules B & C, Executor's Return)	0	
Gross taxable estate		$2,645,065 85
Deductions and losses claimed by executor (Schedules D to J inclusive Executor's Return)	$244,821 06	
Less items excluded in computation of tax (Schedule M hereof)	450 00	
Deductions allowed in computation		244,371 06
Net taxable estate		$2,400,694 79

[fol. 61] This estate passes to Classes A, B, and C as follows:

Class	Total taxable estate	Exemption	Net taxable estate		Rate	Tax
A	.....	....	.....	.....	@ 1% is $	.....
				.....	@ 2% is $	.....
				.....	@ 3% is $	.....
				.....	@ 4% is $	.....
B	.....	....	.....	.....	@ 2% is $	.....
				.....	@ 3% is $	.....
				.....	@ 4% is $	.....
				.....	@ 5% is $	.....
C	$2,400,694.79	$500	$2,400,194.79	$24,500.00	@ 5% is	$1,225.00
				$75,000.00	@ 6% is	$4,500.00
				$100,000.00	@ 7% is	$7,000.00
				$2,200,694.79	@ 8% is	$176,055.58
					Total Tax	$188,780.58

With interest at 9% per annum from ..... to ..... amount to $.....

Total amount due $188,780.58

[fol. 62] The amount of tax payable by each beneficiary is as follows:

Name of beneficiary	Value of share	Amount of tax
Class C:		
Gustave Hirsch	$5,000 00	$393 18
Eugene Hirsch	$5,000 00	393 18
Nora Ullman	$5,000 00	$395 18
Marcelle Humbert (35):		
Life use of $12,500 of which the present value is	$8,072 18	$634 76*
Issue of Marcelle Humbert:		
Remainder interest in $12,500 of which the present value is	$4,427 82	$348 19*
Laure Choffin (42):		
Life use of $12,500 of which the present value is	$7,310 61	$574 88*
Issue of Laure Choffin:		
Remainder interest in $12,500 of which the present value is	$5,189 39	$408 07*
Harriet O. Lassner (53):		
Life use of $314,820 11 of which the present value is	$145,891 54	$11,472 30*
	$45,000 00	$3,538 61
	$1,058 75	$83 26
	$243 00	$19 10
Aleen Lassner (21):		
Life use of $314,820 11 upon the death of Harriet O. Lassner of which the present value is	$84,926 00	$6,678 22*
Issue of Aleen Lassner:		
Remainder interest in $314,820.11 of which the present value is (Upon the death of Harriet Lassner and Aleen Lassner.)	$84,002 57	$6,605 61*

*Taxes payable from principal of fund.

Name of beneficiary	Value of share	Amount of tax
[fol. 63] Lotta O. Rouff (48): Life use of $10,000 of which the present value is	$5,215 77	$410 15*
Issue of Lotta O. Rouff: Remainder interest in $10,000 of which the present value is	$4,784 23	$376 21*
Josephine Thellian (55): Life use of $10,000 of which the present value is	$4,391 16	$345 30*
Hudson Guild of the City of New York	$25,000 00	$1,965 90
Cooper Union for the Advancement of Science and Art	$20,000 00	$1,572 72
Educational Alliance of the City of New York	$10,000 00	$786 36
Hebrew Technical Institute for Boys	$10,000 00	$786 36
Hebrew Technical Institute for Girls	$10,000 00	$786 36
Lilly Oppenheimer (50): Life use of $25,000 of which the present value is	$12,470 38	$980 61*
Franklin C. Lewis	$15,000 00	$1,179 54
Josephine W. French	$20,000 00	$1,572 72
Ethel C. Bratton	$15,000 00	$1,179 54
Alice M. Paine	$10,000 00	$786 36
Irwin A. Oppenheimer (52): Life use of $20,000 of which the present value is	$9,507 26	$747 61*
E. L. Blum	$1,500 00	$117 96
C. Bourns	$353 60	$27 81
R. Baiges	$327 60	$25 76
J. Bernard	$965 00	$75 88

*Taxes payable from principal of fund.

Name of beneficiary	Value of share	Amount of ta
[fol. 64] J. Brunner	$291.20	$22.90
M. Cohn	$468.00	$36.80
R. Creet	$140.40	$11.04
R. Cohn	$405.60	$31.89
J. Dempsey	$1,200.00	$94.36
G. B. Downer	$700.00	$55.05
W. Dugan	$412.50	$32.44
W. Drake	$800.00	$62.91
J. Dunn	$353.60	$27.80
H. Engels	$640.00	$50.33
W. C. Fried	$450.00	$35.39
A. Fyfe	$900.00	$70.77
T. Fallon	$450.00	$35.39
J. Foley	$377.50	$29.69
Miss L. Froelke	$260.00	$20.45
J. Gresser	$416.00	$32.71
J. Graf	$156.00	$12.27
T. Gregan	$156.00	$12.27
A. L. Golsch	$800.00	$62.91
H. C. Hutchins	$2,000.00	$157.27
C. Havens	$375.00	$29.49
J. Hogan	$148.20	$11.65
L. Hydeman	$520.00	$40.89
R. Irving	$140.40	$11.04
F. E. Kohl	$600.00	$47.18
M. Klages	$351.00	$27.60
J. Kennelly	$288.60	$22.69
H. L. Larrabee	$1,350.00	$106.16
E. P. Leonard	$1,350.00	$106.16
L. J. Levy	$1,000.00	$78.64
F. Link	$150.00	$11.80
P. Linehan	$166.40	$13.08
Miss A. C. Loue	$296.40	$23.31
C. Moebius	$1,000.00	$78.84
E. Maxon	$1,300.00	$102.23
[fol. 65] B. E. Marks	$1,125.00	$88.47
J. Moore	$364.00	$28.62
Wm. Mulker	$468.00	$36.80
Miss G. E. Morris	$440.00	$34.60
H. Mockridge	$525.00	$41.28
R. McCourt	$270.40	$21.25

Name of beneficiary	Value of share	Amount of tax
J. McMurray	$395.20	$31.07
Miss A. McCabe	$130.00	$10.21
K. Ryan	$416.00	$32.70
Wm. Rolph	$384.80	$30.25
P. Reid	$750.00	$58.98
J. C. Strong	$700.00	$55.04
C. Schiapello	$200.00	$15.73
R. M. Wood	$900.00	$70.77
A. L. Wertheimer	$600.00	$47.18
Wm. Waldyer	$375.00	$29.49
J. Wolf	$750.00	$58.98
J. Wartel	$300.00	$23.59
R. Wahl	$343.20	$26.99
Ethical Culture School	$1,795,208.53	$141,167.69
Total		$188,780.58

Schedule M

Items Excluded in Computation

The following items returned in the statement under oath are excluded from the deductions claimed against the gross taxable estate because they are not comprehended under the provisions of the succession tax statutes as proper deductions in arriving at the net taxable estate.

The following item is not deductible under Section 6 of Chapter 190, Public Acts of 1923.

Wages gardeners to Nov. 29, 1924	$450.00

[fol. 66] Exhibit O

Reason of Appeal

(Same as Reason of appeal filed Jan. 11, 1926 and printed on page 6 of Record.)

In Superior Court of Fairfield County, February 26, 1926

[Title omitted]

Stipulation for Reservation to Supreme Court of Errors—Filed March 3, 1926

It is hereby stipulated by all the parties to this cause appearing herein by counsel that the above entitled cause may be reserved for the advice of the Supreme Court of Errors upon the statement of facts set forth in the stipulation dated February 26th, 1926, and on file in said cause, and upon the questions of law set forth in said stipulation as filed. And further that the present determination of the above questions of law will be in the interest of simplicity, directness and economy in judicial action because the facts agreed upon as set forth in said stipulation are all the facts in the above entitled action, and the determination of the questions of law set forth in said stipulation will be a final determination of said cause.

For the reasons above stated, the parties hereby request that the questions above set forth be reserved for the advice of the Supreme Court of Errors.

Arthur Silberman, Charles Moebius, Joseph Plaut, Franklin C. Lewis, and Abraham L. Gutman, by Cummings & Lockwood, Their Attorneys. William H. Blodgett, Tax Commissioner, by Frank E. Healy, Atty. Gen.; Lucius F. Robinson, Farwell Knapp, His Attorneys.

[File endorsement omitted.]

[fol. 66½] In Superior Court of Fairfield County, May 7, 1926

[Title omitted]

Amendment to Stipulation—Filed May 11, 1926

The parties to the above entitled action hereby stipulate that the United States Liberty Bonds and Treasury certificates referred to in Exhibit "A" on page 28 of the printed

record, and also those referred to in subdivision L of paragraph 9 on page 12 of the printed record, were not registered at the time of Robert B. Hirsch's death.

Plaintiffs, by Cummings & Lockwood, Their Attorneys. William H. Blodgett, Tax Commissioner, by Frank E. Healy, Atty. Gen.; Farwell Knapp, Inheritance Tax Attorney, Lucius F. Robinson, His Attorneys.

[File endorsement omitted.]

[fol. 67] In Superior Court of Fairfield County, February 26, 1926

Reservation—Filed March 3, 1926

At the request and by the consent of the parties to this action appearing by counsel, the Court reserves the questions of law which said parties have raised, as appears in the pleadings and by the stipulation on file, for the advice of the Supreme Court of Errors to be holden at Bridgeport within and for the Third Judicial District on the 2nd Tuesday of April, 1926, as to what judgment, decree or decision should be made or rendered thereon by this Court.

Nickerson, Judge.

[File endorsement omitted.]

[fols. 68 & 69] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 70] In Supreme Court of Errors of Connecticut

Appeal of Silberman et al.

Appeal from Superior Court, Fairfield County, Leonard J. Nickerson, Judge

Opinion—October 18, 1926

In the matter of the estate of Robert B. Hirsch. From an order and decree of the probate court determining the

inheritance or succession tax due the state and approving the computation of William H. Blodgett, Tax Commissioner, Arthur Silberman and others, executors, appealed to the superior court, which reserved the case. Superior court advised in accordance with opinion.

Robert B. Hirsch died on September 23, 1924, domiciled at Stamford, leaving a will and two codicils thereto, duly [fol. 71] executed in accordance with the law of both the states of New York and Connecticut. The plaintiffs are the surviving executors of the will. The decedent left real estate, chattels, cattle, horses, and poultry in Connecticut: also a debt due from a resident of Connecticut and a certificate of stock in a Connecticut corporation. Plaintiffs concede the right of Connecticut to tax the transfer of these, aggregating at inventory appraisal $49,097.27. The great bulk of the decedent's estate consisted of his interest in the partnership of William Openhym & Sons, appraised at $1,687,245.34, and organized and doing business in New York City under the New York limited partnership act; (2) certificates of stock in New York, New Jersey, and Canada corporations appraised at $277,864.25; (3) bonds and treasury certificates of the United States appraised at $615,121.17, and a bond due from Connecticut residents or corporations appraised at $521.67; (4) a savings bank account in New York; (5) a life insurance policy in the Mutual Life Insurance Company of New York payable to the estate; and (6) cash in New York City. All of these bonds and certificates of stock were at the time of decedent's death, and for a long time prior thereto had been, physically located in safe deposit boxes in New York City. The partnership assets consisted of real estate located in New York and also Connecticut, merchandise, chattels, credits, United States bonds, and other personal property.

The testator bequeathed the larger part of his estate to charitable and educational corporations organized under the laws of New York state and located therein. The executors offered the will and codicils for probate prior to their offer in Connecticut; they were admitted to probate in the Surrogate's Court in the county of New York, and thereafter the executors proceeded in the settlement of the estate

in New York. They have paid from the funds of the estate legacies provided in the will and codicils amounting to $299,297.45. They have also paid the debts, the federal estate tax, and the New York transfer or inheritance tax, which amounted to $19,166.04. The transfer tax report exempted the legacies bequeathed to charities and educational institutions in accordance with the New York law. The executors have also paid to the trustees named in the will and codicils the amounts therein mentioned for the benefit of certain designated individuals. The executors sold the stocks standing in the name of the testator and made the transfer of the same to the purchasers upon exhibiting to the transfer agents of the stock letters testamentary issued by the Surrogate's Court in New York, and upon like exhibition, together with proof of claim and certificate of death, and the Mutual Life Insurance Company paid to the executors the proceeds of the policy issued to decedent by it. And upon a like exhibition to the National City Bank of New York City, it paid to the executors the money on deposit therein to the credit of the decedent at the date of his death.

Thereafter, on January 8, 1925, the executors exhibited to the court of probate for the district of Stamford an exemplified copy of the will and codicils of the decedent and of the record of the proceedings proving and establishing the same in the Surrogate's Court of New York county, and on January 15, 1925, the court approved and accepted a bond in the sum of $1,000 conditioned that the executors should well and faithfully discharge their duties according to law, and issued to them letter testamentary, made an order limiting a time for the presentation of claims and directing the filing of an inventory of all the property including choses in action of the estate of the decedent, and appointed appraisers, who made and filed an inventory of all the items of property belonging to the decedent at the time of his death.

On September 1, 1925, the executors filed in the probate court for the district of Stamford and with the tax commissioner for Connecticut, a statement under oath covering the property of the estate and the claimed deductions therefrom, for the purpose of determining the succession tax, if any, due the state of Connecticut. Thereafter the tax

commissioner filed a copy of his computation of this tax with the probate court, to which the attorneys for the executors made objection, but the court on December 4, 1925, made its order and decree approving the computation of $188,780.58 fixed by the tax commissioner, and directing the executors to pay such amount to the treasurer of the state of Connecticut, and exhibit to the probate court a proper receipt therefor. The plaintiff executors duly took an appeal from this order.

The questions of law upon which the parties desire the advice of this court are:

(1) Was the decedent's interest in the partnership at the time of his death, for the purpose of the Connecticut succession tax, to be treated as consisting of specific items of partnership property?

(2) Was the decedent's interest in the partnership of William Openhym & Sons subject, in whole or in part, to the Connecticut succession tax?

(3) If decedent's interest in said partnership consisted of specific items of partnership property, was any or were all of the following classes of property owned by the partnership subject to the Connecticut succession tax:

(a) Real estate physically situated in New York.

(b) Merchandise, furniture, and fixtures physically situated in New York.

(c) Cash in partnership office in New York.

(d) Deposits in New York and foreign banks.

(e) Trade acceptances and notes and loans receivable; the physical evidences of the obligations thereof being [fol. 72] physically situated in New York, and none of which were due from Connecticut residents or corporations.

(f) Advances to consignors secured by merchandise physically situated in New York, none of which advances were due from Connecticut residents or corporations.

(g) United States Liberty bonds physically situated in New York.

(h) Bonds of corporations not incorporated under the laws of the state of Connecticut, the bonds being physically situated in New York.

(i) Certificates of shares of stock of corporations not incoporated under the laws of the state of Connecticut, the certificates being physically situated in New York.

(j) Prepaid expenses and advances to travelers, none of which were due from Connecticut residents or corporations.

(4) Were the United States Liberty bonds mentioned in Exhibit A hereto annexed, and constituting a part of the "partner's investments" held by the partnership, referred to in paragraph 10 of the stipulation of facts, and physically situated in the state of New York at the time of the decedent's death, subject to the Connecticut succession tax?

(5) Were the treasury certificates mentioned in Exhibit A hereto annexed, and constituting a part of the "partner's investments" held by the partnership, referred to in paragraph 10 of the foregoing stipulation of facts and physically situated in the state of New York at the time of the decedent's death, subject to the Connecticut succession tax?

(6) Were the stocks of corporations not organized under the laws of the state of Connecticut, which stocks constituted a part of the "partner's investments" referred to in paragraph 10 of the foregoing stipulation of facts, the certificates of which were physically situated in the state of New York at the time of the decedent's death, subject to the Connecticut succession tax?

(7) Were stocks of Connecticut corporations owned by the testator at the time of his death, the certificates of which were physically situated in New York state, subject to the Connecticut succession tax?

(8) Were the deposits in banking institutions not situated in the state of Connecticut, owned by the decedent at the time of his death, subject to the Connecticut succession tax?

(9) Were the proceeds realized by the executors from a policy of life insurance on the life of the testator issued by the Mutual Life Insurance Company of New York, which policy was situated in New York state at the time of the decedent's death, and which policy was payable, by its terms, to the executors at the death of the insured, subject to the Connecticut succession tax?

(10) Were the coins and bank notes (described as cash on hand) belonging to the decedent at the time of his death and situated at that time in the state of New York, subject to the Connecticut succession tax?

(11) Is the computation of the Connecticut succession tax made by the defendant as set forth in Exhibit N correct?

(12) Is the succession tax imposed by the state of Connecticut on any of the foregoing items of property belonging to the decedent at the time of his death a taking of property without due process of law in violation of Amendment 14 of the Constitution of the United States?

(13) Is the succession tax imposed by the state of Connecticut on any of the foregoing items of property belonging to the decedent at the time of his death a failure to give full faith and credit to the laws of the state of New York conferring jurisdiction and power upon said Surrogate's Court in New York county, and relating to said transfer, and therefore in violation of article 4 of section 1 of the Constitution of the United States?

(14) Were the gifts made by the will of the decedent to educational and charitable corporations in New York exempt from the Connecticut succession tax?

(15) Was the gift to trustees for the benefit of the Ethical Culture Society, a charitable and religious corporation organized in New York, exempt from the Connecticut succession tax?

Argued before Wheeler, C. J., and Curtis, Maltbie, Haines, and Hinman, JJ.

Abraham L. Gutman, of New York City, Charles D. Lockwood, of Stamford, Kenneth Dayton, of New York City, and Walter N. Maguire, of Stamford, for appellants.

Lucius F. Robinson and Farwell Knapp, Inheritance Tax Atty., both of Hartford, and Frank E. Healy, Atty. Gen., for appellee.

Wheeler, C. J. (after stating the facts as above):

The questions of law upon which our advice is requested under the facts as stipulated concern the order and decree

of the probate court for the district of Stamford approving the succession or inheritance tax as computed by the tax commissioner of Connecticut, and ordering the executors to pay the same to the treasurer of the state of Connecticut. Most of the items upon which the tax was imposed were intangible personal property; as to a few items tangible personal property.

[1] Our present succession act, chapter 190 of the Public Acts of 1923, does not differ in material degree from our earlier succession acts; the decisions under the earlier acts are therefore equally applicable to the act of 1923. It is "not a tax upon property, but upon the right or privilege of succession to the property of a decedent." Corbin v. Townshend, 92 Conn. 501, 503, 103 A. 647, 648. Our act specifically includes every beneficial interest of all the personal property of a domiciled decedent whether within or [fol. 73] without the state, and claims jurisdiction over all personal property for the purposes of succession to determine its descent or distribution. We interpret our act and determine that nature of this tax in Hopkins, Administrator, Appeal from Probate, 77 Conn. 644, 60 A. 657, in these words:

"The act is framed in view of the principle that personal property is bequeathed by will, and is descendible by inheritance, according to the law of the domicile, and that the disposition, distribution of, and succession to, personal property, wherever situated, is to be governed by the laws of that state where the owner had his domicile at the time of his death. * * * The right to lay such a duty is independent of the right to impose a direct tax upon all the property included in the succession, and its amount may properly depend upon a valuation of property included in the succession upon which the state could not impose a direct tax."

In further explanation of their nature and origin, we say in Warner v. Corbin, 91 Conn. 532, 536, 100 A. 354, 355:

"They are not levied, as taxes proper are, either upon property or against persons. They differ from taxes, properly speaking, in that they are exactions in the nature of death duties 'to be paid to the state upon the occasion of

death and the consequent transfer of ownership in the property of the decedent, through the intervening custody and administration of the law, to the persons designated by the law, through the statutes regulating wills, descents, and distributions.' "

The justification for the imposition of this tax upon personal property having its situs outside the jurisdiction of this state, and thus involving a power of jurisdiction in that state in respect to this tax, we state in Gallup, Treasurer, Appeal from Probate, 76 Conn. 617, at page 621, 57 A. 699, 700:

"Personal property is bequeathed by will, and is descendible by inheritance, according to the law of the domicile and not by that of its situs. Eidman v. Martinez, 184 U. S. 578, 581 [22 S. Ct. 515, 46 L. Ed. 697]. It is a settled principle of law that the disposition, distribution of, and succession to, personal property, wherever situated, is to be governed by the laws of that state where the owner had his domicile at the time of his death. Holcomb v. Phelps, 16 Conn. 127, 132. Under our law it is the duty of the administrator at the place of domicile to inventory and account for all such personal property, and that property is regarded as within the jurisdiction of the state for purposes of administration and distribution. It is true that the actual situs of such property in another state involves a power of jurisdiction in that state in respect to it for certain purposes, including the power through process of administration to appropriate so much as may be necessary to the satisfaction of claims of local creditors; but such administration is ancillary to that of the domicile, and the jurisdiction thus exercised is not in denial of, but in aid of, that exercised at the owner's domicile. This principle of law, though founded on international comity, is equally obligatory upon our courts as a legal rule of purely domestic origin. This principle is settled and unquestioned law within this state." Hopkins' Appeal, 77 Conn. 644, 655, 60 A. 657.

In Bridgeport Trust Company's Appeal, 77 Conn. 657, 60 A. 662, we held it to be the duty of the administrator to inventory personal property without the state "when its inventory is required for any ordinary purpose of administration, or when required, as it has been required by statute

since 1897, for the special purpose of enabling the court of probate to perform its statutory duty of computing the succession tax in respect to the estate in settlement." Other cases which assert and uphold the principle upon which our succession tax rests are Nettleton's Appeal, 76 Conn. 235, 56 A. 565; Bankers' Trust Co. v. Blodgett, 96 Conn. 361, 365, 114 A. 104; and Bridgeport Projectile Co. v. Bridgeport, 92 Conn. 316, 320, 102 A. 644.

[2-4] We dwell upon these familiar decisions in order to especially emphasize three features underlying our succession act, and indeed every succession act: (1) The succession to real estate within the state and personal property everywhere is governed by the law of the state of the decedent's domicile; (2) the state exercises this right in virtue of the privilege it accords to its citizens or its domiciled residents of either disposing of their property by will, or, in the event of intestacy, having it descend in accordance with the statute law of the state; (3) a succession tax is not an ad valorem tax, nor to be considered upon the same basis as that tax, it is a privilege tax, an excise tax, such as a franchise tax.

[5] The decisions and the legal literature upon this subject not infrequently fail to distinguish the succession tax as wholly apart from the ad valorem tax. The taxable situs of the former depends for its jurisdiction upon the domicile of the decedent; the latter upon the situs of the property taxed. The attempt to rest the jurisdiction of each upon the situs of property taxed requires a departure from the underlying principle of the succession tax—the right to receive from the decedent, as we hold, or as many jurisdictions hold, the right to transmit from the decedent.

It is not easy to reconcile the decisions of the Supreme Court of the United States upon this point, as well as their application; its latest utterance as applied to a transfer or inheritance tax upon shares of stock is: "The tax here is not upon property, but upon the right of succession to property." Rhode Island Hospital Trust Co., Ex'r, v. Doughton, Commissioner, 270 U. S. 69, 46 S. Ct. 256, 70 L. Ed. —, 43 A. L. R. 1374. And we must assume this still to be the law of that court as applied to intangibles. It follows earlier pronouncements of that court, for example, that of Chief Justice White in Knowlton v. Moore, 178 U. S. 41, 20 S. Ct. 747, 44 L. Ed. 969:

[fol. 74] "Taxes of this general character are universally deemed to relate, not to property eo nomine, but to its passage by will or by descent in cases of intestacy, as distinguished from taxes imposed on property, real or personal as such, because of its ownership and possession. In other words, the public contribution which death duties exact is predicated on the passing of property as the result of death, as distinct from a tax on property disassociated from its transmission or receipt by will, or as the result of intestacy. * * * Laws of this nature * * * rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested. * * * Confusion of thought may arise unless it be always remembered that, fundamentally considered, it is the power to transmit or the transmission or receipt of property by death which is the subject levied upon by all death duties." United States v. Perkins, 163 U. S. 625, 16 S. Ct. 1073, 41 L. Ed. 287; Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 18 S. Ct. 594, 42 L. Ed. 1037.

The statutes of over four-fifths of the states purport to impose a transfer or succession tax upon all property of resident decedents, whether tangible or intangible, except realty located outside the state. The decisions of the states upheld these taxes, and the decisions of the United States Supreme Court as a rule sustain the state decisions. This was the condition of the law until the decision in Frick et al. v. Pennsylvania, 268 U. S. 473, 45 S. Ct. 603, 69 L. Ed. 1058, 42 A. L. R. 316, where it was held that a statute of Pennsylvania providing for a transfer tax on the succession to tangible property which had an actual situs in other states was invalid because it contravened the due process clause of the Fourteenth Amendment. Up to this time not only the state of the domicile of the decedent could impose a transfer tax upon the succession to personal property wherever located, but also the state of the situs of the property, to the measure of its value. The double taxation resulting has been unduly oppressive, and we share in the general feeling of its unfairness. Yet while following and enforcing this decision we cannot but regret its conclusion.

Donble taxation in this class of cases could have been avoided by holding that the domicile of the decedent was the only jurisdiction which could impose a succession tax upon a decedent's personal property wherever situated as well as to hold that only the state of the situs of personal property could impose such a tax. This would have been antagonistic to decided cases, just as the Frick Decision is, but it would have preserved intact the theory upon which succession taxes rest. In one particular the opinion seems to overturn a settled and established principle of probate law. It says at page 491 (45 S. Ct. 605):

"Other decisions show that the power to regulate the transmission, administration, and distribution of tangible personal property on the death of the owner rests with the state of its situs, and that the laws of other states have no bearing save as that state expressly or tacitly adopts them—their bearing then being attributable to such adoption and not to any force of their own."

State courts are necessarily in constant touch with probate matters and this court has held it to be the law, and we think it to be the general law, "that the disposition, distribution of, and succession to, personal property, wherever situated, is to be governed by the laws of that state where the owner had his domicile at the time of his death." Gallup, Treasurer, Appeal from Probate, supra. The foreign jurisdiction enforces the will of the decedent domiciled here, or, if he died intestate, it enforces the distribution provided by our statutes. It does this unless it shall contravene its own policy, and subject to its right to require the payment of the debts due its citizens by the decedent from the property having its situs in its jurisdiction.

The succession tax which is questioned in this case is not upon tangible property as in the Frick Case, but upon intangible property. The plaintiff seeks to apply by analogy the doctrine of that case. It must be conceded that the Frick Case did not so rule, but expressly excluded from its ruling intangible property. It said:

"The tax which it [Pennsylvania] imposes is not a property tax but one laid on the transfer of property on the death of the owner. * * * Here the tax was imposed on the transfer of tangible personalty having an actual situs in other states. * * * Counsel for the state cite and

rely on Blackstone v. Miller, 188 U. S. 189 [23 S. Ct. 277, 47 L. Ed. 439], and Bullen v. Wisconsin, 240 U. S. 625 [36 S. Ct. 473, 60 L. Ed. 830]. Both cases related to intangible personalty, which has been regarded as on a different footing from tangible personalty."

In the latest case upon this subject, Rhode Island Hospital Trust Co., Executor, v. Doughton, Commissioner, 270 U. S. 69, 46 S. Ct. 256, 70 L. Ed. —, 43 A. L. R. 1374, Chief Justice Taft says:

"In the matter of intangibles, like choses in action, shares of stock, and bonds, the situs of which is with the owner, a transfer tax of course may be properly levied by the state in which he resides."

Bullen v. Wisconsin, 240 U. S. 625, 36 S. Ct. 473, 60 L. Ed. 830, was a case where one domiciled in Wisconsin had conveyed to a trust company in Illinois certain bonds, stocks, and notes constituting a trust fund, reserving an absolute power of control over the trust. The court held that the state of the domicile of the decedent could impose an inheritance tax upon this trust fund. Mr. Justice Holmes [fol. 75] discussed the point involved in these words:

"If this fund had passed by intestate succession it would be recognized that by the traditions of our law the property is regarded as a universitas the succession to which is incident to the succession to the persona of the deceased. As the states where the property is situated, if governed by the common law, generally recognize the law of the domicile as determining the succession, it may be said that, in a practical sense at least, the law of the domicile is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicile, whatever the limitations of power over the specific chattels may be, as is especially plain in the case of contracts and stock."

He cited in support of this statement Blackstone v. Miller, 188 U. S. 189, 204, 23 S. Ct. 277, 47 L. Ed. 439; Eidman v. Martinez, 184 U. S. 578, 586, 589, 590, 592, 22 S. Ct. 515, 46 L. Ed. 697; Frothingham v. Shaw, 175 Mass. 59, 55 N. E. 623, 78 Am. St. Rep. 475; and our own case, Appeal of Hopkins, 77 Conn. 644, 60 A. 657.

Ad valorem taxes upon intangible property, outside the state imposing the tax, as upon a debt, were held in State

Tax on Foreign-Held Bonds, 15 Wall. 300, 21 L. Ed. 179, to be taxable only in the state of the domicile of the creditor. "Debts," says Mr. Justice Field, "owing by corporations like debts owing by individuals, are not property of the debtors in any sense, they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed." Later, in Blackstone v. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, it was held that money of a nonresident on deposit in a bank in another state might be taxed in that state on the principle that the bank was indebted to the estate of the decedent, and the practical fact that the state of New York had power over the person of the debtor. Of this conclusion Mr. Justice Beach says, in Bridgeport Projectile Co. v. City of Bridgeport, 92 Conn. 316, 321, 102 A. 644, 646:

"Carried to its conclusion, this would authorize any credit to be taxed to the creditor at the domicile of the debtor; but, as pointed out in the opinion, the result is not to deprive the state of the creditor's domicile of its undoubted right to lay a similar tax. It simply subjects the credit to double taxation."

This broad generalization was not approved in Buck v. Beach, 206 U. S. 392, 27 S. Ct. 712, 51 L. Ed. 1106, 11 Ann. Cas. 732, where the court said:

"We have not had a case where neither the party assessed nor the debtor was a resident of or present in the state where the tax was imposed, and where no business was done therein by the owner of the notes or his agent relating in any way to the capital evidenced by the notes assessed for taxation. We cannot assent to the doctrine that the mere presence of evidences of debt, such as these notes, under the circumstances already stated, amounts to the presence of property within the state."

The analysis of this and other cases referred to by Mr. Justice Holmes in Wheeler v. Sohmer, 233 U. S. 434, 34 S. Ct. 607, 58 L. Ed. 1030, as stated in the concurring opinion, was approved, and the broad doctrine announced in the opinion of Mr. Justice Holmes in that case that notes found in a foreign jurisdiction were taxable in and of themselves refuted by five of the justices, two in the dissenting and

three in the concurring opinions. Evidences of debt in the form of notes, mortgages, and other securities which are kept in the domicile of the debtor in the hands of an agent for the owner domiciled in another state and interest thereon collected and deposited for use or reinvestment in a local bank by the agent acquire a situs sometimes called a "business situs," and may be taxed in the domicile of the debtor. The leading case supporting this doctrine is New Orleans v. Stempel, 175 U. S. 309, 20 S. Ct. 110, 44 L. Ed. 174; Bristol v. Washington County, 177 U. S. 133, 20 S. Ct. 585, 44 L. Ed. 701; Metropolitan Life Ins. Co. v. New Orleans, 205 U. S. 395, 27 S. Ct. 499, 51 L. Ed. 853. Under the decisions of the United States Supreme Court, intangibles have one situs for an ad valorem tax at the domicile of the creditor or owner, and one where the debt has acquired a situs by having the evidences of the debt physically within the domicile of the debtor for longer than a temporary period or used in a business there conducted for the benefit of the creditor. The doctrine of State Tax on Foreign-Held Bonds, 15 Wall. 300, 21 L. Ed. 179, that intangibles have an ad valorem taxable situs at the domicile of the creditor, has never been overruled, and is the undoubted rule of law of that court. Kirtland v. Hotchkiss, 100 U. S. 491, 25 L. Ed. 558; Buck v. Beach, 206 U. S. 392, 401, 27 S. Ct. 712, 51 L. Ed. 1106, 11 Ann. Cas. 732; Fidelity & Columbia Trust Co. v. City of Louisville, 245 U. S. 54, 38 S. Ct. 40, 62 L. Ed. 145, L. R. A. 1918C, 124.

[6] The law of Connecticut is in accord with these decisions. In Bridgeport Projectile Co. v. Bridgeport, 92 Conn. 316, 102 A. 644, we held that a general deposit in a commercial bank in New York by a Connecticut corporation doing business here was taxable in Connecticut upon the intangible right to repayment by check by the bank on demand. Intangibles therefore have a taxable situs at the domicile of the owner with reference to an ad valorem tax, and if any analogies may be drawn from this rule applicable to the succession tax, they must point to the same rule for each. Law writers incline to a rule taxing debts whether the tax be an ad valorem tax or a succession tax. Yet, in as strong a presentation of the subject as we have seen, the article of "Jurisdiction over Debts," by Profes-[fol. 76] sor Carpenter, in 31 Harvard Law Review, 918 we find the author states:

"In spite of principle and weighty authority in support of the taxing of debts at the debtor's domicile it still seems to be generally conceded * * * that they are taxable at the creditor's or owner's domicile."

The appellants are seeking an adjudication from this court that intangibles are taxable at the domicile of the debtor irrespective of whether the debt is there represented by specialties or used in the domicile of the debtor in the business of the creditor owner. This would be in direct variance to the decisions of the United States Supreme Court as well as of our own state.

[7] We are bound to follow these decisions regardless of whether we accede to the correctness of the rule announced by them. If we were not bound to follow these and might decide this case having regard solely to right principle, we could reach no other conclusion. Those who advocate the imposition of an inheritance or succession tax upon debts at the domicile of the debtor claim that a debt has a situs in the domicile of the debtor because that is the only place where control lies—that is, where the debt can be enforced. Three considerations weigh most strongly against this view: (1) The debt is enforceable wherever the debtor can be reached. This is seen in an action of garnishment in a state other than that of the domicile of the debtor. Harris v. Balk, 198 U. S. 215, 222, 223, 25 S. Ct. 625, 49 L. Ed. 1023, 3 Ann. Cas. 1084. The control does not necessarily lie in the state of the domicile of the debtor. Debts in and of themselves can have no locality. The right to enforce them in the domicile of the debtor is dependent upon the presence of the debtor. (2) If debts can have a locality it can only be where the parties are to whom they are due. Separate from them they can have no situs. (3) As we have said earlier in this opinion, the question of situs has no application to a succession tax. That is based upon a different theory, upon the right of transfer which exists because the domicile of the decedent gives to him the right to dispose of his property by will, or, if intestate, to have it disposed of according to the law of his domicile. The tax is not upon the decedent's property; hence there is no occasion to determine its situs. The right of transfer exists because of the domicile of the decedent.

Then these writers urge that the right to tax is given in return for the service rendered, and the only service

rendered in the case of transfer, succession, or inheritance tax is in the domicile of the debtor where the tax must be enforced. Again, there is a confusion of the ad valorem tax on property and the succession or inheritance tax. The service rendered by the state of the decedent's domicile is the granting to him of the right to dispose of his property, or to have it disposed of by law after his decease. That is the service upon which this tax rests and upon none other. The succession tax is not imposed in return for the protection given to the property or person of the decedent. The act granting the right of transfer must be within the control of the state imposing the succession tax. The fallacy in the reasoning vesting jurisdiction in the state having the control of the property with the right of transfer has resulted in confusion of thought against which Chief Justice White warned in Knowlton v. Moore, supra.

[8] The rule the executors seek to have established is that intangibles have not only a taxable situs independent of the domicile of the creditor, but also at the domicile of the debtor, and further, that this is the only situs at which they can be taxed. The proposed rule is unsupported by decision. A succession or inheritance tax imposed in the domicile of the decedent on the right of transfer is a simple and certain tax, and one easily ascertained. If in place of this the tax be imposed in the jurisdiction where the item of property has a situs, it compels a difficult determination and one which will have to be made in as many different states as the several items of intangible property of the estate are situated, involving a system fruitful in complexity, unfairness, confusion, and expense. True, double taxation of the right of transfer, in the domicile of the decedent owner, and in the domicile of the debtor, may result, but in practice it will be far less than in the proposed system of transfer taxation according to situs. Nonresident ad volorem taxes on intangible property are being gradually abolished by the enactment of reciprocal statutes designed to avoid double taxation of such kinds of intangible property. The movement will be apt to include, ere long, within its restrictions, succession or inheritance taxes. These statutes, with which our own statute, chapter 239, Public Acts 1925, must be classed, are a recognition of the principle that the only taxable situs of intangibles is at the domicile of the decedent owner.

[9] We pass to the consideration of the specific items of intangible property which in this proceeding are claimed to have been taxed under the Connecticut succession act in violation of the due process clause of the Fourteenth Amendment. The certificates of stock in the Canada, New York, and New Jersey corporations could be subjected to a transfer tax in the jurisdictions of their incorporation (Frick v. Pennsylvania, 268 U. S. 473, 497, 45 S. Ct. 603, 69 L. Ed. 1058, 42 A. L. R. 316; Rhode Island Hospital Trust Co., Ex'r, v. Doughton, Commissioner, 270 U. S. 69, 80, 46 S. Ct. 256, 70 L. Ed. —, 43 A. L. R. 1374), and likewise subject to a transfer tax in the domicile of the decedent. Similar taxes were sustained in Gallup's Appeal, 76 Conn. 617, 618, 57 A. 699, and Hopkins' Appeal, 77 Conn. [fol. 77] 644, 60 A. 657; Bullen v. Wisconsin, 240 U. S. 625, 36 S. Ct. 473, 60 L. Ed. 830; Rhode Island Hospital Trust Co., Ex'r, v. Doughton, Commissioner, supra, 270 U. S. at page 80, 46 S. Ct. 256; Frothingham et al. v. Shaw, 175 Mass. 59, 55 N. E. 623, 78 Am. St. Rep. 475.

[10-12] The largest item in controversy is that arising from the succession tax computed upon decedent's interest in a partnership located and doing business in New York City. The partnership was organized under the limited Partnership Act of New York. It was subject to the law of New York in practically the same way a corporation organized under the law would have been subject. The stockholder is not the owner of the property of the corporation (Rhode Island Hospital Trust Co. v. Doughton, Commissioner, 270 U. S. 69, 46 S. Ct. 256, 70 L. Ed. —, 43 A. L. R. 1374); no more is the partner the owner of the property of the limited partnership. The interest of the decedent in this partnership must be determined by the law of New York. This partnership act was, with inconsequent differences identical with the Uniform Partnership Law. Under section 52 of the New York act (Consol. Laws, c. 39), the partner's interest is personal property. And it is immaterial of what the partnership assets consist, whether reality or tangible or intangible personalty. Under section 51, the partner is a co-owner with his partners of the partnership property, holding as a tenant in partnership. His interest has been defined as a tenancy in partnership. It is not subject to dower, courtesy, or allowances to widows, heirs, or next of kin. Under section 73, where the partner

dies and the partnership continues the business, his legal representatives may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the partnership with interest. A bequest of the interest of a decedent of New York in a joint-stock association is subject to a transfer tax under chapter 215 of the Laws of New York of 1891; a similar rule must subject the share of a partner who is domiciled in New York in a limited partnership. From this it is clear that the decedent's interest in this partnership under the New York law is a right to a share in the partnership assets after its liabilities have been deducted and a balance struck. The interest is thus a chose in action, hence intangible personal property. While we have not as yet adopted the Uniform Partnership Act our law reaches the same end. Filley v. Phelps, 18 Conn. 294; Canfield v. Hard, 6 Conn. 180; Witter v. Richards, 10 Conn. 37. Gleason and Otis, Inheritance Taxation (3d Ed.) pp. 324 and 325, say:

"The interest of copartners is in the surplus after payment of debts, and is therefore intangible, even if the copartnership owns real estate." Darrow v. Calkins, 154 N. Y. 503, 49 N. E. 61, 48 L. R. A. 299, 61 Am. St. Rep. 637; Russell v. McCall, 141 N. Y. 437, 36 N. E. 498, 38 Am. St. Rep. 807.

Gleason and Otis also say:

"The interest of a nonresident in a New York partnership is taxable under the present New York statute, chapter 664, Laws 1915. The partner is to be regarded in such cases as holding only an interest in the stock or capital of the partnership, which is personal property. If the business of the firm be in operation or there be liabilities outstanding against it, the partners have not an interest in its lands or other assets that may be regarded as property, their interest is in the stock of the firm whatever upon final settlement may be due them."

The limited partnership is classed with corporations in a requirement of reports and franchise taxes. Whitney Realty Co. v. Deland, 228 Mich. 96, 199 N. W. 669; Wharf v. Wharf, 306 Ill. 79, 137 N. E. 446. Since the decedent's

interest in the New York partnership was intangible personal property, it was properly included within the computation under the Connecticut succession tax. That New York also subjected this interest to a transfer tax does not affect the validity of the Connecticut tax. Both, though resulting in double taxation, may be valid. Blackstone v. Miller, supra. Plaintiff argues that though this interest was intangible, it was of a peculiar nature making it equivalent to tangible property. We find no peculiarity in this interest—nothing approaching tangible property. Plaintiff's claim is that since the decedent's interest was inseparably connected with the interests of the other partners in the partnership, and that derived its protection from the laws of New York, and the enforcement of this interest was dependent upon the laws of New York, it is in precisely the situation of the furniture and pictures in the Frick Case. The similitude does not exist unless the decedent's interest in the partnership can be held to be tangible personal property. That cannot be done.

[13, 14] The bonds which were in New York and had long been there were United States bonds and treasury certificates, except two items of mortgage bonds, appraised at $521.67, due the decedent either from residents or corporations of Connecticut. Unquestionably Connecticut could lay a succession tax upon these mortgage bonds just as it could upon the certificate of stock in a corporation of Connecticut though the certificate had been for a long time in another jurisdiction. Bullen v. Wisconsin, 240 U. S. 625, 631, 36 S. Ct. 473, 60 L. Ed. 830; State Tax on Foreign-Held Bonds, 15 Wall. 300, 21 L. Ed. 179. The United States bonds and treasury certificates are strictly speaking mere evidences of debts and intangible personalty. But state and municipal bonds which pass from hand to hand on delivery are treated as a species of tangible personal prop- [fol. 78] erty and have come to be recognized as such. In State Tax on Foreign-Held Bonds, 15 Wall. 300, 21 L. Ed. 179, it is said:

"It is undoubtedly true that the actual situs of personal property which has a visible and tangible existence, and not the domicile of its owner, will, in many cases, determine the state in which it may be taxed. The same thing is true of public securities consisting of state bonds and

bonds of municipal bodies, and circulating notes of banking institutions; the former, by general usage, have acquired the character of, and are treated as, property in the place where they are found, though removed from the domicile of the owner; the latter are treated and pass as money wherever they are."

This doctrine is cited with approval in New Orleans v. Stempel, 175 U. S. 309, 321, 20 S. Ct. 110, 44 L. Ed. 174. In Westinghouse Electric & Mfg. Co. v. Los Angeles County, 188 Cal. 491, 205 P. 1076, it is stated:

"Municipal bonds and securities of that class, which are recognized as a commodity on the market and pass from hand to hand on delivery, are commonly treated as a species of tangible property in themselves, and on this ground, have been frequently held taxable as property wherever actually located."

[15, 16] State bonds of California were held to be taxable as personal property of a non-resident in People v. Home Ins. Co., 29 Cal. 533. The same considerations which converted state and municipal securities into tangible personal property necessarily operate to convert United States bonds and treasury certificates into tangible personal property. As such under the Frick case they are subject to a transfer tax in New York where they were found and nowhere else. Likewise the cash in New York was subject to a transfer tax there and nowhere else. The proceeds of the life insurance policy, physically in New York, was not subject to the transfer tax of New York. Matter of Gordon, 186 N. Y. 471, 79 N. E. 722, 10 L. R. A. (N. S.) 1089; Inheritance Taxes, Blakemore & Bancroft (1914 Ed.) § 218. The proceeds were subject to the succession tax of Connecticut, for the right to them was vested in the decedent's estate as the creditor of the insurance company. The savings account in a bank in New York was a debt owed the decedent by the bank and subject to our succession or inheritance tax upon the same principle as was the interest in the partnership. Fidelity & Columbia Trust Co. v. City of Louisville, 245 U. S. 54, 38 S. Ct. 40, 62 L. Ed. 145, L. R. A. 1918C, 124; Bridgeport Projectile Co. v. Bridgeport, 92 Conn. 316, 102 A. 644.

[17] The executors claim that the bequests to New York charitable and educational corporations should under Connecticut law be exempt from our succession tax. No corporations of these classes are exempt under our statute then in force (section 1, c. 190, Public Acts of 1923), unless they are located within our state and receive state aid. The corporations named in these bequests are located outside our state and are not recipients of state aid. Subsequently, in chapter 47 of the Public Acts of 1925, our law was changed to include within its exemption bequests to corporations wherever situated. The decisions of this court upon which the executors rely have no application to the 1923 act.

[18] The net taxable estate upon which the computation of the tax commissioner should be made is reached by deducting from the net taxable estate $2,400,694.79, the value of the United States bonds and treasury certificates, $615,121.17, the cash in New York $287.48, together with the $19,166.04, being the transfer tax paid to the state of New York upon the stocks of corporations and the limited partnership of William Openhym & Sons, organized under the laws of the state of New York and deductible under the authority of Frick v. Pennsylvania, supra, 268 U. S. at page 497, 45 S. Ct. 603, 69 L. Ed. 1058, 42 A. L. R. 316, provided it had not already been deducted by the tax commissioner in fixing the net taxable estate at $2,400,694.79. Otherwise the computation as made by the tax commissioner is correct.

The superior court is advised that the questions upon which the advice of this court is desired, we answer as follows: 2, 6, 7, 8, 9, yes; 1, 4, 5, 10, 13, 14 and 15, no; 3, all; and 12, yes as to the items contained in 4, 5, and 10.

No costs will be taxed in this court in favor of any party.

In this opinion the other Judges concurred.

[fols. 79 & 79a] IN SUPREME COURT OF ERRORS OF CONNECTICUT

No. 14

ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, Frank C. Lewis, and Abraham Gutman, Executors of the will of Robert B. Hirsch, late of Stamford, Fairfield County, Connecticut,

vs.

Appeal from Probate (ROBERT B. HIRSCH)

On Reservation from the Superior Court

ORDER AS TO QUESTIONS CERTIFIED

This reservation presenting questions of law which have arisen in the trial of a case, pending in the trial Court as may appear in the certified transcript of record, stipulation and reservation on file in this Court, was made by the Superior Court, for Fairfield County, on the 26th day of February, 1926 and came to this Court at its session at Bridgeport, on the second Tuesday of April, 1926; and thence by continuance by stipulation of transference to the present term, when the parties appeared and were fully heard.

Whereupon it is considered and adjudged that the said Superior Court, be and is hereby advised to answer the questions propounded as follows:

Nos. 2, 6, 7, 8, and 9 yes;

Nos. 1, 4, 5, 10, 13, 14 and 15 no; 3 all; and 12 yes, ~~except~~ as to items contained in 4, 5, and 10.

No costs to be taxed in this court in favor of either party.

By the Court.

Michael J. Flanagam, Clerk.

Judgment Oct. 18, 1926.

[fol. 80] Clerk's certificate to foregoing papers omitted in printing.

[fol. 81] In Superior Court of Fairfield County

Present: Hon. John W. Banks, Judge.

Arthur Silberman, Charles Moebius, Joseph Plaut, Franklin C. Lewis, and Abraham L Gutman, Executors, Plaintiffs,

v.

William H. Blodgett, Tax Commissioner, Defendant

Judgment—December 10, 1926

This action by appeal from the Court of Probate for the District of Stamford claiming that the plaintiffs herein were aggrieved by the order and decree of said Court of Probate allowing and approving a certain computation of inheritance and succession tax due the State of Connecticut from the estate of Robert B. Hirsch, deceased, and ordering that the total amount of said tax be the sum of $188,780.58 and that the Executors forthwith pay said amount to the Treasurer of the State of Connecticut, came to this Court on the first Tuesday of January, 1926, and thence by continuance to the 26th day of February, 1926, when, the parties having appeared and the plaintiffs having filed their reasons of said appeal as on file and the parties having agreed by stipulation as to the facts and questions of law involved as on file, said action was thereupon upon stipulation of the parties as on file reserved for the advice and direction of the Supreme Court of Errors within and for the Third Judicial District upon the questions of law as set forth in said stipulation and as to what judgment, de-
[fol. 82] cree or decision should be made or rendered thereon by this Court. Said cause having been heard before said Supreme Court of Errors and said Supreme Court of Errors having rendered its judgment as on file, said cause came to the present time when the parties were at issue, as on file.

Now, therefore, in accordance with the advice and direction of said Supreme Court of Errors, it is

Ordered, adjudged and decreed that the parties in said action be advised, in answer to the several questions propounded, as follows:

Questions 2, 6, 7, 8, 9—yes.
Questions 1, 4, 5, 10, 11, 13, 14, 15—no.
Question 3—all.
Question 12—Yes as to the items contained in questions 4, 5 and 10,

and it is further ordered, adjudged and decreed:

1. That the decedent's interest, at the time of his decease, in the partnership of William Openhym & Sons, valued at $1,687,245.34, for the purpose of the Connecticut succession tax, was not to be treated as consisting of specific items of partnership property.

2. That said decedent's interest in said partnership of William Openhym & Sons, was subject in whole to the Connecticut succession tax.

3. That the "bearer" United States Liberty Bonds, valued at $604,356.10, owned by the decedent at the time of his death and physically situated in the State of New York at said time, were not subject to the Connecticut succession tax.

4. That the "bearer" Treasury Certificates, valued at $10,765.07, owned by the decedent at the time of his death and physically situated in the State of New York at said [fol. 83] time, were not subject to the Connecticut succession tax.

5. That the stocks of corporations not organized under the laws of the State of Connecticut, valued at $277,864.25, which stocks were owned by the decedent at the time of his death, and the certificates of which were physically situated in the State of New York at said time, were subject to the Connecticut succession tax.

6. That the stocks of Connecticut corporations owned by the decedent at the time of his death, valued at $120.00, the certificates of which were physically situated in New York State at said Time, were subject to the Connecticut succession tax.

7. That the deposits in banking institutions not situated in the State of Connecticut, valued at $108.56, owned by the decedent at the time of his death, were subject to the Connecticut succession tax.

8. That the proceeds valued at $14,820.11 realized by the executors from a policy of life insurance on the life of the decedent, issued by the Mutual Life Insurance Company of New York, which policy was situated in New York State at the time of the decedent's death, and which policy was payable by its terms to the executors at the death of the insured, were subject to the Connecticut succession tax.

9. That the coins and bank notes (described as cash on hand) valued at $287.48, belonging to the decedent at the time of his death and situated at that time in the State of New York, were not subject to the Connecticut succession tax.

10. That the computation of the Connecticut succession tax made by the Tax Commissioner, was not correct.

[fols. 84 & 84a] 11. That the succession tax imposed by the State of Connecticut on the items of property belonging to the decedent at the time of his death and referred to in the foregoing paragraphs 3, 4 and 9, is a taking of property without due process of law, in violation of amendment XIV of the Constitution of the United States.

12. That the succession tax imposed by the State of Connecticut on items of property belonging to the decedent at the time of his death, other than the items referred to in the foregoing paragraphs 3, 4 and 9, is not a taking of property without due process of law in violation of amendment XIV of the Constitution of the United States.

13. That said succession tax imposed by the State of Connecticut is not a failure to give full faith and credit to the laws of the State of New York, and is not in violation of Section 1 of Article IV of the Constitution of the United States.

14. That the gifts made by the will of the decedent to educational and charitable corporations in New York were not exempt from the Connecticut succession tax.

15. That the gift to trustees for the Ethical Culture Society, a charitable and religious corporation organized in New York, was not exempt from the Connecticut succession tax; and it is further

Ordered, adjudged, and decreed that the amount of the Succession Tax due to the State of Connecticut from said estate, computed according to the advice and direction of said Supreme Court of Errors is $138,014.61 and that the executors pay to the Treasurer of the State of Connecticut said sum of $138,014.61.

Banks, Judge.

[fol. 85] In Superior Court of Fairfield County

[Title omitted]

Petition for Writ of Error—Filed Fgbruary 23, 1927

To the Hon. George W. Wheeler, Chief Justice of the Supreme Court of Errors and presiding judge of the Superior Court of the State of Connecticut:

Arthur Silbermann, Charles Moebius, Joseph Plaut, Franklin G. Lewis and Abraham L. Gutman, executors, in support of this petition, show as follows:

First. Your petitioners are the executors of the Last Will and Testament of Robert B. Hirsch, deceased.

Second. Heretofore there was conducted within the State of Connecticut a statutory proceeding for the appraisal of the estate of Robert B. Hirsch and the determination of any inheritance and succession tax which might be due thereon to the State of Connecticut, and from the appraisal and determination of William H. Blodgett, Tax Commissioner of the State of Connecticut above named, your petitioners made protest to the Probate Court for the District of Stamford, Connecticut, and on or about December 4th, 1925 the said court made an order and decree allowing and approving a computation of such tax in the sum of $188,-[fol. 86] 780.58 made by said William H. Blodgett, and ordering that such sum be paid by your petitioners to the Treasurer of the State of Connecticut.

Third. Thereafter on or about December 18th, 1925 your petitioners moved an appeal from the said order and decree to the Superior Court to be held in and for the County of Fairfield, Connecticut, and the said appeal was allowed by

order of the said Probate Court on December 28th, 1925, and on or about January 8th, 1926 your petitioners filed their reasons of appeal in the said Superior Court, Fairfield County. While the said proceeding in the Superior Court, Fairfield County, is designated an appeal from the Court of Probate, the record of the proceedings in the Court of Probate is not brought up to the said Superior Court and is no part of the subsequent proceedings because the said Court of Probate is not a court of record and because on the appeal to the Superior Court, which is a court of general jurisdiction and is a court of record, the case is tried and considered de novo and new evidence is taken and the first record made in the proceeding is that made in the Superior Court.

Fourth. On or about March 3rd, 1926 the parties filed in the Superior Court, Fairfield County, their stipulation that the said cause should be reserved for the advice of the Supreme Court of Errors upon the statement of facts and the questions of law set forth in another stipulation between the parties dated February 26th, 1926, and by order filed on or about March 3rd, 1926, made by the Hon. Leonard J. Nickerson, a judge of the said Superior Court, Fairfield County, the said questions were reserved for the advice of the said Supreme Court of Errors as to what judg-
[fol. 87] ment, decree, or decision should be made or rendered thereon by the said Superior Court. The said stipulations and reservation were in accordance with the practice in the State of Connecticut whereby a cause pending in the Superior Court in which the parties are agreed upon the facts and the issues of law may be heard in the first instance by the Supreme Court of Errors and the said Supreme Court of Errors advises the Superior Court of the correct answers to the questions of law upon the stipulated facts, and the judgment of the Superior Court is entered in accordance with such advice.

Fifth. The appeal of your petitioners and the questions of law stated in the said stipulation were argued in the Supreme Court of Errors and the said court rendered its opinion and advice to the Superior Court thereon on or about October 18th, 1926, and upon such opinion and advice and in conformity thereto the Superior Court, Fairfield County, entered judgment on or about December 10th, 1926.

It was thereby adjudged and decreed that the succession to and transfer of the interest of the decedent in the partnership of Wm. Openhym & Sons, New York City, the stocks of corporations not organized under laws of the State of Connecticut, the proceeds of a policy of life insurance issued by a New York insurance company (the certificates of such stock and the policy being physically situated in the State of New York at the time of decedent's death) and deposits in banking institutions not situated in the State of Connecticut owned by the decedent at the time of his death, all as shown and set forth in the said stipulation and reservation, were subject to the succession tax imposed by the State of Connecticut pursuant to the provisions of Chapter 190 of the Public Acts of 1923 of Connecticut, and that the [fol. 88] tax thereon imposed by such law did not constitute the taking of property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, and did not deny full faith and credit to the public acts, records and judicial proceedings of the State of New York in violation of Article IV, Section 1 of the Constitution of the United States, and that the said statute was not invalid for such reasons, and it was further adjudged and decreed that the executors pay to the Treasurer of the State of Connecticut the sum of $138,014.61 as succession tax, including therein a succession tax on the items of property above mentioned.

Sixth. According to the practice in the State of Connecticut above set forth the said judgment and decree so entered on December 11th, 1926 by the Superior Court, Fairfield County, upon the advice and decision of the Supreme Court of Errors, as aforesaid, is a final judgment or decree in a suit in a highest court in the State in which the decision could be had.

Seventh. The suit in which the said judgment and decree was entered was one in which the validity of a statute of the State of Connecticut was drawn in question on the ground that the said statute was repugnant to the constitution and laws of the United States, and particularly to the Fourteenth Amendment to the said Constitution, and to Section 1 of Article IV of the said Constitution, in that your petitioners alleged in the protest made to the Court of

Probate as above set forth and in their reasons of appeal filed in the Superior Court, Fairfield County, and argued before the Supreme Court of Errors (pursuant to the ques-[fol. 89] tions of law set forth in the stipulation and record in the Superior Court and in the reservation to the Supreme Court, and thereby reserved for the advice and opinion of that court) that the succession tax attempted to be levied under the provisions of Chapter 190 of the Laws of 1923 of Connecticut constituted the taking of your petitioner's property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and that such action denied full faith and credit to the public acts, records and judicial proceedings of the State of New York in violation of Section 1, Article IV of the Constitution of the United States, and that the said statute of the State of Connecticut was invalid for such reasons in levying and providing for the collection of such a tax.

Eighth. The opinion and advice of the Supreme Court of Errors and the judgment and decree of the Superior Court, Fairfield County, entered thereon were in favor of the validity of the said state statute and of the succession tax attempted to be levied thereunder and overruled the objections made by your petitioners on the constitutional grounds as above set forth, and the determination of the said constitutional questions was necessary to the determination of the case, and the judgment and decree entered was based thereon.

Wherefore, because this case is one which may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error under the provisions of Section 237 of the Judicial Code your petitioners pray that a writ of error from the Supreme Court of the United States may issue to the Superior Court of the State of Connecticut, Fairfield County, for the correction of the errors so complained of and directing that a transcript of [fol. 90] the record in this case duly authenticated by the Clerk of the Superior Court of Connecticut, Fairfield County, may be sent to the Supreme Court of the United States, as provided by law and that your petitioners may

have such other and further relief in the premises as may be just and proper.

Arthur Silbermann, Charles Moebius, Joseph Plaut, Franklin G. Lewis, Abraham L. Gutman, Executors, Petitioners, by Charles D. Lockwood, Att'y; Abraham L. Gutman, Att'y.

[fol. 90a] [File endorsement omitted.]

[fol. 91] In Superior Court of Fairfield County

[Title omitted]

Assignments of Error—Filed February 23, 1927

Now come the petitioners, Authur Silbermann, Charles Moebius, Joseph Plaut, Franklin G. Lewis and Abraham L. Gutman, as executors, and show that there are errors in the record, proceedings and final judgment in the above case and file the following assignment of errors, upon which they will rely upon the prosecution of their writ of error to review the judgment and decree of the Superior Court of the State of Connecticut for Fairfield County entered on the opinion and advice of the Supreme Court of Errors in the State of Connecticut in favor of the respondent and against the petitioners:

First. The Superior Court of the State of Connecticut for Fairfield County erred in adjudging and decreeing and the Supreme Court of Errors of the State of Connecticut erred in rendering its opinion and advice upon which the said judgment was entered that Chapter 190 of the Public Acts of 1923 of the State of Connecticut was valid, and did not deprive your petitioners of their property without due process of law in violation of the Fourteenth Amendment [fol. 92] of the Constitution of the United States, in and to the extent that it imposes a succession tax upon the succession to and transfer of the interest of the decedent, Robert B. Hirsch, in the partnership of Wm. Openhym & Sons, New York City, the stocks of corporations not organized under the laws of the State of Connecticut, the proceeds of a policy of life insurance issued by a New York

insurance company (the certificates of such stock and the policy being physically situated in the State of New York at the time of decedent's death) and deposits in banking institutions not situated in the State of Connecticut owned by the decedent at the time of his death, all of which are more fully identified and described in the record in the said Superior Court.

Second. The Superior Court of the State of Connecticut for Fairfield County erred in adjudging and decreeing and the Supreme Court of Errors of the State of Connecticut erred in rendering its opinion and advice upon which the said judgment was entered, that Chapter 190 of the Public Acts of 1923 of the State of Connecticut was valid, and did not deny full faith and credit to the public acts, records and judicial proceedings of the State of New York in violation of Article 4, Section 1 of the Constitution of the United States, in imposing a succession tax upon the succession to and transfer of the interest of the decedent, Robert B. Hirsch, in the items of property mentioned and described in the first assignment of error.

Third. The Superior Court of the State of Connecticut for Fairfield County erred in adjudging and decreeing and the Supreme Court of Errors of the State of Connecticut erred in rendering its opinion and advice upon which [fol. 93] the said judgment was entered, that the tax imposed by Chapter 190 of the Public Acts of 1923 of the State of Connecticut is valid and does not deprive your petitioners of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States in so far as it is a tax on the succession to and transfer of the interest of the decedent, Robert B. Hirsch, in the items of property mentioned and described in the first assignment of error.

Fourth. The Superior Court of the State of Connecticut for Fairfield County erred in adjudging and decreeing and the Supreme Court of Errors of the State of Connecticut erred in rendering its opinion and advice upon which the said judgment was entered, that the tax imposed by Chapter 190 of the Public Acts of 1923 of the State of Connecticut is valid and does not deny full faith and credit to the public acts, records and judicial proceedings of the State

of New York in violation of Article 4, Section 1 of the Constitution of the United States in so far as it is a tax upon the succession to and transfer of interest of the decendent Robert B. Hirsch in the items of property mentioned in the first assignment or error.

Fifth. The Superior Court of the State of Connecticut for Fairfield County erred in adjudging and decreeing in conformity with the opinion and advice of the Supreme Court of Errors of the State of Connecticut that your petitioners pay to the Treasurer of the State of Connecticut the sum of $138,014.61 as and for the succession tax due to the State of Connecticut pursuant to Chapter 190 of the [fol. 94] Public Acts of 1923 of the State of Connecticut, in that in so far as the said tax was imposed upon the succession to, and transfer of, the interest of the decedent Robert B. Hirsch in the items of property mentioned and described in the first assignment of error, the said judgment deprives your petitioners of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Sixth. The Supreme Court of Errors of the State of Connecticut erred in rendering its opinion and its advice to the Superior Court of the State of Connecticut for Fairfield County upon which the said judgment mentioned in the fifth assignment of error was entered, that the computation theretofore made by William H. Blodgett, Tax Commissioner of the State of Connecticut, of the succession tax upon the Estate of Robert B. Hirsch, which computation is fully set forth in the record of the said Superior Court, was valid and correct except to the extent that it included a tax upon certain bearer liberty bonds and treasury certificates and coin and bank notes more fully identified and described in the record in said Superior Court, in that by such computation, and by the judgment and decree entered by the Superior Court of the State of Connecticut for Fairfield County upon such opinion and advice, your petitioners were deprived of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Seventh. The Superior Court of the State of Connecticut for Fairfield County erred in adjudging and decreeing in

conformity with the opinion and advice of the Supreme Court of Errors of the State of Connecticut that your peti-
[fol. 95] tioners pay to the Treasurer of the State of Connecticut the sum of $138,014.61 as and for the succession tax due to the State of Connecticut pursuant to Chapter 190 of the Public Acts of 1923 of the State of Connecticut, in that in so far as the said tax was imposed upon the succession to, and transfer of, the interest of the decedent Robert B. Hirsch in the items of property mentioned and described in the first assignment of error, the said judgment denies full faith and credit to the public acts, records and judicial proceedings of the State of New York in violation of Article 4, Section 1 of the Constitution of the United States.

Eighth. The Supreme Court of Errors of the State of Connecticut erred in rendering its opinion and its advice to the Superior Court of the State of Connecticut for Fairfield County upon which the said judgment mentioned in the fifth assignment of error was entered, that the computation theretofore made by William H. Blodgett, Tax Commissioner of the State of Connecticut, of the succession tax upon the Estate of Robert B. Hirsch, which computation is fully set forth in the record in the said Superior Court, was valid and correct except to the extent that it included a tax upon certain bearer liberty bonds and treasury certificates and coin and bank notes more fully identified and described in the record in said Superior Court, in that by such computation, and by the judgment and decree entered by the Superior Court of the State of Connecticut for Fairfield County upon such opinion and advice full faith and credit is denied to the public acts, records and judicial proceedings of the State of New York in violation of Article 4, Section 1 of the Constitution of the United States.

[fol. 96] Ninth. The Superior Court of the State of Connecticut for Fairfield County erred in sustaining the order and decree of the Probate Court for the District of Stamford, Connecticut, dated December 4, 1925, allowing and approving a certain computation of the estate and inheritance tax due the State of Connecticut on the estate of Robert B. Hirsch, deceased, filed in the said court by William H. Blodgett, Tax Commissioner of the State of Connecticut, on September 15, 1925, and in sustaining the said

computation of succession tax in so far as the said order and decree and the said computation imposed a succession tax upon the succession to and transfer of the interest of the decedent, Robert B. Hirsch, in the items of property mentioned in the first assignment of error, in that the said order and decree and the said computation to that extent deprived your petitioners of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Tenth. The Superior Court of the State of Connecticut for Fairfield County erred in sustaining the order and decree of the Probate Court for the District of Stamford, Connecticut, dated December 4, 1925, allowing and approving a certain computation of the estate and inheritance tax due the State of Connecticut on the estate of Robert B. Hirsch, deceased, filed in the said court by William H. Blodgett, Tax Commissioner of the State of Connecticut, on September 15, 1925, and in sustaining the said computation of succession tax in so far as the said order and decree and the said computation imposed a succession tax upon the suc- [fol. 97] cession to and transfer of the interest of the decedent Robert B. Hirsch, in the items of property mentioned in the first assignment of error, in that the said order and decree and the said computation to that extent denies full faith and credit to the public acts, records and judicial proceedings of the State of New York in violation of Article 4, Section 1 of the Constitution of the United States.

By reason whereof your petitioners have petitioned for a Writ of Error and as plaintiffs in error pray that the said judgment and decree entered by the Superior Court of the State of Connecticut for Fairfield County on the opinion and advice of the Supreme Court of Errors in the State of Connecticut be reversed as to the foregoing matters and that judgment be entered in favor of your petitioners therefor and for costs.

Arthur Silbermann, Charles Moebius, Joseph Plaut, Franklin K. Lewis, Abraham L. Gutman, as Executors of the Estate of Robert B. Hirsch, Deceased, by Abraham L. Gutman, an Executor; Charles W. Lockwood, Atty.

Presented with the Writ of Error this 18th day of February, 1927.

George W. Wheeler, Chief Justice of the Supreme Court of Errors and Presiding Judge of the Superior Court of the State of Connecticut.

[fol. 97a] [File endorsement omitted.]

[fols. 98-99a] Bond on writ of error for $500.00 approved; omitted in printing.

[fols. 100 & 101] Return to writ of error omitted in printing.

[fol. 102] In Superior Court of Fairfield County

Writ of Error—Filed February 23, 1927

United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Superior Court of the State of Connecticut, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said court before you or some of you, following the advice and opinion of the Supreme Court of Errors of the State of Connecticut, the same being the highest court of law or equity of said state in which a decision could be had in the said proceeding between Arthur Silbermann, Charles Moebius, Joseph Plaut, Franklin G. Lewis and Abraham L. Gutman, as executors of the Estate of Robert B. Hirsch, deceased, and William H. Blodgett, Tax Commissioner of the State of Connecticut, wherein was drawn in question the validity of a treaty or statute of, or authority exercised under, the United States and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under a state on the ground of their being repugnant to the constitution,

treaty or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the constitution or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission; a manifest error hath happened, to the great dam-
[fol. 103] age of said Arthur Silbermann, Charles Moebius Joseph Plaut, Franklin G. Lewis and Abraham L. Gutman, as executors of the Estate of Robert B. Hirsch, deceased, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court of the United States at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done, therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 18th day of February in the Year of our Lord, One thousand nine hundred and twenty-seven.

C. E. Pickett, Clerk of the District Court of the United States, District of Connecticut. (Seal.)

Allowed on February 18, 1927.

George W. Wheeler, Chief Justice of the Supreme Court of Errors and Presiding Judge of the Superior Court of the State of Connecticut.

[fol. 103a] [File endorsement omitted.]

[fol. 104] In Superior Court, Fairfield County, February 18, 1927

[Title omitted]

Judge's Certificate—Filed February 23, 1927

I, the undersigned, George W. Wheeler, Chief Justice of the Supreme Court of Errors and Presiding Judge of the Superior Court of the State of Connecticut, do hereby certify unto Honorable the Supreme Court of the United States that in the cause above named there was drawn in question the validity of a statute of the State of Connecticut, to wit: Chapter 190 of the Public Acts of 1923, on the ground that it was repugnant to the Constitution of the United States and especially to the Fourteenth Amendment to, and to Article 4, Section 1 of, the said Constitution in that the said statute in purporting to levy a succession tax on the transfer of and succession to the interest of the decedent in the partnership of Wm. Openhym & Sons, New York City, United States liberty bonds and treasury certificates payable to bearer, the stocks of corporations not organized under the laws of the State of Connecticut, the proceeds of a policy of life insurance issued by a New York insurance company, coins and banknotes described as "cash [fol. 105] on hand", (the said liberty bonds, treasury certificates, the certificates of such stock, the policy and the cash on hand all being physically situated in the State of New York at the time of decedent's death) and deposits in banking institutions not situated in the State of Connecticut, all owned by the decedent at the time of his death and more particularly set forth and described in the record in the said Superior Court, deprived the appellants, Arthur Silbermann, Charles Moebius, Joseph Plaut, Franklin G. Lewis and Abraham L. Gutman, as executors of the Estate of Robert B. Hirsch, deceased, of their property without due process of law and further denied full faith and credit to the Public acts, records and judicial proceedings of the State of New York in its purported administration and distribution of the said estate. I do further certify that the decision in the said case and the judgment entered therein

on December 10, 1926 on the advice and opinion of the Supreme Court of Errors was in favor of the validity of the said statute in and to the extent that it was decided, adjudged and decreed that the said statute did not take the property of the said executors without due process of law in contravention of the Fourteenth Amendment of the Constitution of the United States so far as it imposed a succession tax upon the succession to and transfer of the partnership interest, corporate stocks, proceeds of the life insurance policy and deposits in banking institutions above described and in that it was further decided, adjudged and decreed that it did not deny full faith and credit to the public acts, records and judicial proceedings of the State [fol. 106] of New York in violation of Article 4, Section 1 of the said Constitution of the United States, and that the said decision and judgment were against the validity of the said statute in and to the extent that it was decided, adjudged and decreed that so far as the said statute imposed a tax upon the bearer United States liberty bonds and treasury certificates and upon the coins and banknotes described as cash on hand, it constituted a violation of the Fourteenth Amendment of the Constitution of the United States.

I do further certify that according to the practice in the State of Connecticut, the judgment rendered in the Superior Court of the State of Connecticut for the County of Fairfield on December 10, 1926, upon the advice and opinion of the Supreme Court of Errors, is a final judgment and decree in the highest court of the State of Connecticut in which a decision in the suit could be had.

Dated February 18th, 1927.

George W. Wheeler, Chief Justice of the Supreme Court of Errors and Presiding Judge of the Superior Court in the State of Connecticut.

[fol. 106a] [File endorsement omitted.]

[fols. 107-109a] Citation, in usual form, showing service on Wm. H. Blodgett, omitted in printing.

[fol. 110] In Superior Court of Fairfield County

[Title omitted]

Stipulation re Transcript of Record

It is hereby stipulated by and between the attorneys for the parties in the above entitled proceeding that the papers to be transmitted to the Supreme Court of the United States by the Clerk of the Superior Court of the State of Connecticut for Fairfield County, pursuant to a writ of error allowed by the Hon. George W. Wheeler, Chief Justice of the Supreme Court of Errors and Presiding Judge of the Superior Court of the State of Connecticut, on February 18th, 1927, and issued on that day in the proceeding between the parties above mentioned are the following, and that this stipulation shall take the place of the præcipe required to be filed by counsel for the respective parties under and pursuant to Rule 9 of the Rules of the Supreme Court of the United States:

1. The printed record used in the Supreme Court of Errors on the reservation of the above case, including page 66½ thereof, the same being a stipulation dated May 7th, 1926 and filed May 11th, 1926.

2. The opinion of the Supreme Court of Errors rendered on October 18th, 1926.

[fol. 111] 3. The judgment upon such reservation of the said Supreme Court dated October 18th, 1926 answering the questions propounded in the said reservation.

4. The judgment entered by the Superior Court on December 10th, 1926 in conformity to the advice and opinion of the Supreme Court of Errors.

5. The petition for writ of error, assignment of errors, bond, writ of error and certificate by the Hon. George W. Wheeler dated February 18th, 1927 and filed with the Clerk of this court on February 23rd, 1927.

6. The citation to the respondent, William H. Blodgett, Tax Commissioner, dated February 18th, 1927, served on the respondent and his attorney on February 24th 1927 and filed with the Clerk of this court together with this stipulation.

7. The present stipulation.

It is further stipulated that the writ of error, petition for writ of error, assignment of errors, citation with acknowledgment of service and certificate by the Hon. George W. Wheeler annexed hereto are the papers so described in the paragraphs of this stipulation numbered 5 and 6 and that the copies of the printed record, opinion, judgment of the Supreme Court, judgment of the Superior Court and bond hereto annexed are true and correct copies of the said papers described in the paragraphs of this stipulation numbered 1, 2, 3, 4 and 5; that the foregoing papers together with this stipulation, constitute the complete transcript of the record to be certified to the Supreme Court of the United States at Washington, together with all of the papers used in connection with the writ of error, and that the Clerk of the Superior Court of the State of Connecticut [fols. 112 & 112a] for Fairfield County may certify this transcript of record and other papers without further formality.

Dated Hartford, Conn., February —, 1927.

Cummings & Lockwood, Attorneys for Petitioners.
Benjamin W. Alling, Attorney General of the State of Connecticut, Attorney for Respondent.

[fol. 113] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1926

No. 964

ORDER ALLOWING CERTIORARI—Filed April 18, 1927

The petition herein for a writ of certiorari to the Superior Court of Fairfield County of the State of Connecticut, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

April 18, 1927.

[fols. 114 & 115] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1926

STIPULATION TO CONSOLIDATE CASES AND TO PRINT ONLY THE RECORD IN NO. 965—Filed May 4, 1927

It is hereby stipulated and agreed between the attorneys for the respective parties hereto that the above entitled cases be consolidated, that only one record be printed, which record shall be entitled in the name of both cases, and that counsel may brief the two cases together.

Abraham L. Gutman Counsel for Arthur Silberman et al. Charles E. Hughes, Counsel for William H. Blodgett.

[fol. 116] [File endorsement omitted.]

[fol. 117] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION TO PRINT THE ENTIRE RECORD—Filed March 15, 1927

Pursuant to sub-division 9 of Rule 11 of the Rules of the Supreme Court of the United States, the plaintiffs-in-error hereby make the following statements of points on which they intend to rely in the argument of this appeal:

1. That Chapter 190 of the Public Acts of Connecticut, 1923, the judgment from which this appeal is taken and the proceedings antecedent thereto are invalid because the plaintiffs-in-error are thereby deprived of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

2. That Chapter 190 of the Public Acts of Connecticut, 1923, the judgment from which this appeal is taken and the proceedings antecedent thereto denied full faith and credit to the Public Acts, records and judicial proceedings of the State of New York in violation of Section 1 of Article IV of the Constitution of the United States.

Respectfully submitted.

Abraham L. Gutman, Kenneth Dayton, Attorneys for Plaintiffs-in-Error.

[fol. 118] Due and timely service of a copy of the within Statement of Points on the 10 day of March, 1927 is hereby admitted.

Farwell Knapp, Attorney for Defendant-in-Error.

[fols. 119 & 120] It is hereby stipulated by and between the attorneys for the parties to this appeal that the parts of the record which each of the attorneys think necessary for the consideration of the said appeal are the entire transcript of record and appeal papers filed with the writ of error herein, and this stipulation is filed for the purpose of complying with sub-division 9 of Rule 11 of the Rules of the Supreme Court of the United States and is in lieu of designation of the parts of the record required by said rule, and the defendant-in-error hereby waives service upon himself of the designation required by the said rule to be made by the plaintiff-in-error.

Dated: New York City, March 8th, 1927.

Abraham L. Gutman, Kennath Dayton, Attorneys for Plaintiffs-in-Error. Benjamin W. Alling, Attorney General of Connecticut; Farwell Knapp, Inheritance Tax Atty; Lucius F. Robinson, Attorneys for Defendant-in-Error.

[fol. 121] [File endorsement omitted.]

Endorsed on cover: File No. 32,532. Connecticut Superior Court. Term No. 191. Arthur Silbermann, Charles Moebius, Joseph Plaut, et al., executors, etc., plaintiffs in error, vs. William H. Blodgett, Tax Commissioner of the State of Connecticut. Filed March 9th, 1927. File No. 32,532.

Office Supreme Court, U. S.
FILED
MAR 9 1927
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut,
Petitioner,

against

ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, FRANKLIN C. LEWIS, ABRAHAM L. GUTMAN, Executors,
Respondents.

No. [redacted] 190

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF FAIRFIELD COUNTY OF THE STATE OF CONNECTICUT AND BRIEF IN SUPPORT THEREOF.

BENJAMIN W. ALLING,
Attorney General of Connecticut,

FARWELL KNAPP,
Inheritance Tax Attorney of Connecticut.

CHARLES E. HUGHES,
LUCIUS F. ROBINSON,
Of Counsel.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut,
Petitioner,

against

ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, FRANKLIN C. LEWIS, ABRAHAM L. GUTMAN, Executors,
Respondents.

No.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF FAIRFIELD COUNTY OF THE STATE OF CONNECTICUT AND BRIEF IN SUPPORT THEREOF.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, WILLIAM H. BLODGETT, as Tax Commissioner, on behalf of the State of Connecticut, respectfully shows:

This is a petition for a writ of certiorari to the Superior Court of Fairfield County, Connecticut, to review that part

of its decision entered in accordance with mandatory advice from the Supreme Court of Errors of Connecticut, which adjudged that the State of Connecticut could not collect a succession tax upon that part of the Estate of Robert B. Hirsch, deceased, a resident of Connecticut, which consisted of United States Bonds, Treasury Certificates of Indebtedness, and cash, when the Bonds, Certificates and cash were in the State of New York at the time of the death, because the imposition of such a tax was beyond the power of the State of Connecticut, and because the imposition of such a tax would have amounted to a deprivation of the legatee's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

I.

Statement.

Robert B. Hirsch died on September 23, 1924, domiciled at Stamford, Connecticut, leaving a Will and two codicils thereto, duly executed in accordance with the law of Connecticut. Among the property owned by the decedent at the time of his death wer :

(a) Interest in the partnership of William Openhym & Sons, organized and doing business in New York City under the New York Limited Partnership Act, appraised at $1,687,245.34;

(b) Shares of Stock in New York, New Jersey and Canadian corporations, appraised at $277,864.25; the certificates of which were at the time of his death in New York City;

(c) Bonds and Treasury Certificates of Indebtedness of the United States, appraised at $615,121.17; said bonds and certificates being at the time of his death in New York City. While the property constituted a part of the decedent's "partners' investments" in that it was held by the partnership of William Openhym & Sons, subject to the terms of a certain letter, dated December 1, 1923 (R31), it was conceded by all parties that these bonds and certificates were the individual property of the decedent;

(d) A Savings Bank account in a New York Bank, appraised at $108.56;

(e) A life insurance policy in the Mutual Life Insurance Company of New York, payable to the Estate; said policy being at the time of his death in New York City; appraised at $14,820.11; and

(f) Cash in New York City, consisting of Bank Notes and coin, appraised at $287.48.

New York Proceedings:

The Will and codicils were offered for probate in the Surrogates' Court of New York County, and Letters Testamentary thereon were issued to the respondents herein. A Transfer Tax was levied and paid to the State of New York and a statement of the property upon which the Transfer Tax was so paid (R39) shows that a tax was imposed only upon the transfer of the stock in the New York corporations and of the interest in the New York partnership. No Transfer Tax was imposed upon the Bonds and Certificates of indebtedness of the United States, the cash, or other personal property owned by the decedent and within the State. Indeed the New York Transfer

Tax Law does not impose a tax upon such property of non-residents, even if located within the State.

Connecticut Proceedings:

Thereafter, and on January 8, 1925, the respondents exhibited to the Court of Probate for the District of Stamford, Connecticut, an exemplified copy of the Will and codicils of the decedent, and of the record of the procedure establishing the same in the Surrogates' Court of New York County, and on January 15, 1925, the Court of Probate for the District of Stamford, Connecticut, issued Letters Testamentary to the respondents herein.

On September 1, 1925 the respondents filed in the Court of Probate for the District of Stamford, and with your petitioner, the Tax Commissioner of Connecticut, a statement, under oath, covering the property of the estate and the claimed deductions therefrom, for the purpose of determining the succession tax due the State of Connecticut. The Connecticut inheritance and succession tax law (Chap. 190 of Acts in 1923) provided:

> "Sec. 1. All property, and any interest therein, owned by a resident of this State at the time of decease * * * shall be subject to the tax here prescribed."

Thereafter the Tax Commissioner filed a copy of his computation of the tax, imposing it upon the succession to, and the transfer of, all of the above enumerated property, with the Court of Probate, to which the respondents herein made objection. That Court on December 4, 1925, made its order approving the computation and directing payment of that sum.

The respondents duly took an appeal from that order to the Superior Court of Fairfield County of Connecticut, alleging *inter alia* as grounds of appeal that (R7):

> "4. Said Court of Probate erred in holding ing that the bonds owned by the decedent and located without the State of Connecticut are subject to the Connecticut Succession Tax."
>
> "7. Said Court of Probate erred in not holding that the attempt of the State of Connecticut to levy a Succession Tax on the Transfer of * * * said bonds * * * constitutes the taking of property without due process of law in violation of the Federal Constitution."

An agreed stipulation of facts was entered into by your petitioner and the respondents herein, and it was further stipulated that among the questions of law involved were (R26-27):

> "4. Were the United States Liberty Bonds mentioned in Exhibit A hereto annexed, and constituting a part of the "partner's investments", held by the partnership, referred to in paragraph 10 of the stipulation of facts, and physically situated in the State of New York at the time of the decedent's death, subject to the Connecticut succession tax?
>
> "10. Were the coins and bank notes (described as cash on hand) belonging to the decedent at the time of his death and situated at that time in the State of New York, subject to the Connecticut succession tax?
>
> "12. Is the succession tax imposed by the State of Connecticut on any of the foregoing items of property belonging to the decedent at the time of his

death, a taking of property without due process of law in violation of Amendment XIV of the Constitution of the United States?"

Your petitioner and the respondents herein stipulated that the questions of law involved in the appeal should be reserved for the advice and determination of the Supreme Court of Errors of Connecticut (R66). Accordingly, the Superior Court ordered that the questions of law raised by the stipulation be referred for advice to the Supreme Court of Errors.

The Supreme Court of Errors answered questions 4 and 10 in the negative, and answered question 12 in the affirmative so far as relating to the property affected by questions 4 and 10, and so advised the Superior Court of Fairfield County.

Accordingly, a final judgment was entered by the Superior Court of Fairfield County adjudging, among other things (R91-92):

"3. That the 'bearer' United States Liberty Bonds, valued at $604,356.10, owned by the decedent at the time of his death and physically situated in the State of New York at said time, were not subject to the Connecticut succession tax."

"4. That the 'bearer' Treasury Certificates, valued at $10,765.07, owned by the decedent at the time of his death and physically situated in the State of New York at said time, were not subject to the Connecticut succession tax."

"9. That the coins and bank notes (described as cash on hand) valued at $287.48, belonging to the decedent at the time of his death and situated at that time in the State of New York, were not subject to the Connecticut succession tax."

> "11. That the succession tax imposed by the State of Connecticut on the items of property belonging to the decedent at the time of his death and referred to in the foregoing paragraphs 3, 4 and 9, is a taking of property without due process of law, in violation of Amendment XIV of the Constitution of the United States."

All of the other property above enumerated (pp. 2-3, *supra*) was held subject to the Connecticut inheritance and succession tax, and the power of the State to impose the tax upon the succession to that property was sustained.

The sole ground of decision was that these Bonds and Certificates of indebtedness were "tangible personal property" and under the decision of this Court in *Frick* v. *Pennsylvania*, 268 U. S. 473, the State of Connecticut had *no power* to impose a succession tax upon them. The Court said:

> "As such" [*i. e.*, tangible personal property] "under the *Frick* case they are subject to a transfer tax in New York, where they are found, and nowhere else. Likewise, the cash in New York was subject to a Transfer Tax there, and nowhere else."

The General Assembly of the State of Connecticut, recognizing that this decision holding unconstitutional under the Federal Constitution of a portion of its statute constituted a public emergency, by an Act of February 23, 1927, authorized and directed your petitioner, as Tax Commissioner on behalf of the State of Connecticut, to petition this Court for a writ of certiorari reviewing this decision. A copy of that Act is printed as an appendix to this petition.

The respondents herein, as Executors of the Estate of Robert Hirsch, after the passage of that Act petitioned for

and have been granted a writ of error to this Court to review the decision of the Superior Court, insofar as it adjudged that a succession tax was properly imposed upon the interest of the decedent in (1) the partnership of William Openhym & Sons, (2) the stocks of corporations not organized under the laws of the State of Connecticut, (3) the proceeds of a policy of life insurance, issued by a New York Insurance Company, and (4) deposits in banking institutions not situated in the State of Connecticut; said Certificates of stock and said policy of insurance being within the State of New York at the time of the death of the decedent.

II.

The Issue.

The issue thus presented by this petition is, whether the State of Connecticut has the power to levy a tax upon the succession to or the transfer of personal property of a resident decedent evidenced by Bonds and Treasury Certificates of Indebtedness of the United States, and cash, when such bonds, certificates and cash are outside of the territory of the taxing State at the time of death.

III.

Reasons for Review.

Your petitioner earnestly submits that the opinion of the Supreme Court of Errors of Connecticut is a misinterpretation of *Frick* v. *Pennsylvania,* 268 U. S. 473; that it is contrary to the principles of law as they have always been

understood and asserted and which should not be departed from in an absence of a decision by this Court upon the point; that it is contrary to the statement of this Court in *Rhode Island Trust Co.* v. *Doughton*, 270 U. S. 69, 81, and that the Fourteenth Amendment to the Federal Constitution does not preclude a State from imposing a tax upon the succession to or the transfer of Municipal bonds, Treasury Certificates of Indebtedness, and cash of a citizen wherever such property might be at his death.

The decision is of fundamental importance to the State of Connecticut and to every one of the States. The amount involved in this particular suit is large. In addition, a large amount of refunds will be necessary if the decision of the State Court is upheld. Moreover, many States do not impose a tax upon such property of non-residents within the State at the time of the death of the non-resident. The ease with which bonds and cash and similar property can be moved about and secreted makes it possible for the owner of such property to avoid altogether taxation upon the succession to it should the Fourteenth Amendment be held to prevent the State of domicil from imposing a tax upon the succession to or the transfer of it. This facility with which such property can be moved about from place to place—and held in different jurisdictions at the will of the owner without the knowledge of the taxing authorities of the State in which it might happen to be at the time of the owner's death renders it highly important that the power of the State of the domicil should be upheld.

The judgment of the Superior Court of Fairfield County, entered in accordance with the mandatory advice of the

Supreme Court of Errors, is the judgment of the highest court of the State of Connecticut in which a decision on this suit could be had. According to the practice in Connecticut the record in this case is lodged in the Superior Court of Fairfield County, and a writ of certiorari properly runs to that court. *Clarke's Appeal,* 70 Conn. 483; *Foote* v. *Women's Board of Missions,* 162 U. S. 439.

WHEREFORE, your petitioner, referring to the attached brief in support of the foregoing reasons for review, respectfully prays that this Honorable Court issue a writ of certiorari, directing the Superior Court of Fairfield County, Connecticut, to certify and send to this Court a full and complete transcript of the record herein, to the end that the said case may be reviewed and determined by this Court, as provided by law, and that so much of the judgment of the Superior Court of Fairfield County, Connecticut entered in accordance with the mandatory advice of the Supreme Court of Errors of Connecticut, as is herein involved, may be reversed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

William A Blodgett
Tax Comm. of Conn.

UNITED STATES OF AMERICA,
STATE OF CONNECTICUT,
COUNTY OF HARTFORD. } ss.: Hartford, March 8, 1927

WILLIAM H. BLODGETT, being duly sworn, says: That he is the Tax Commissioner of the State of Connecticut, petitioner; that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the facts therein stated are true to the best of his knowledge, information and belief.

William H Blodgett.

Sworn to before me this 8th day of March, 1927.

Farwell Knapp
Notary Public

Certificate.

We hereby certify that we have examined the foregoing petition and that in our opinion the petition is well founded and that the case is one in which the prayer of the petition should be granted by this Court.

CHARLES E. HUGHES,

Lucius F. Robinson

LUCIUS F. ROBINSON,

Farwell Knapp

FARWELL KNAPP,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

WILLIAM H. BLODGETT, Tax Commissioner of the State of Connecticut,
Petitioner,

against

ARTHUR SILBERMAN, CHARLES MOEBIUS, JOSEPH PLAUT, FRANKLIN C. LEWIS, ABRAHAM L. GUTMAN, Executors,
Respondents.

No.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Statement.

The sole issue involved in this petition is the power of the State of Connecticut to impose a tax upon the succession to and the transfer of so much of the Estate of ROBERT B. HIRSCH, deceased, a resident of Connecticut, which consisted of United States Bonds, Treasury Certificates of Indebtedness, and cash. The written evidences of those governmental obligations being within the State of New York at the time of the decease, the Superior Court of Fairfield County, Connecticut, has adjudged, in accordance with the mandatory advice from the Supreme Court of Er-

rors of Connecticut, that the imposition of such a tax is in violation of the Fourteenth Amendment of the Constitution of the United States.

FIRST. The decision by the State Court upon the Federal question is not in accord with the applicable decisions of this Court.

The power of the States to levy a tax upon the succession to, or the transfer of, the personal property of its citizens has long been recognized and constantly sustained by this Court. This Court has recognized that the tax is not a direct tax, but rather an excise tax. Accordingly, it was held in *Plummer* v. *Coler,* 178 U. S. 115, that the State of New York might impose such an excise tax upon the transfer of obligations of the United States.

Historically, this power of the States to tax has extended to all of the property of the resident decedent, except real property located without the State. Title to personal property descends, by well-settled principles of the common law, in accordance with the law of the domicil. It has therefore been recognized that the domiciliary State had the power to impose a succession or transfer tax upon all of the personal property of its resident decedents even when located outside of the State. That power was recognized, as it relates to bonds and stocks, as early as *Carpenter* v. *Pennsylvania,* 17 How. 456. In that case the Court said:

> "The validity of the Act, as affecting successions to open after its enactment is not contested; nor is the authority of the State to levy taxes upon personal property belonging to its citizens, but situated beyond its limits, denied." (p. 462.)

This Court, however, has recently held in the case of *Frick* v. *Pennsylvania,* 268 U. S. 473, that the prohibitions of the Fourteenth Amendment precluded the State of Pennsylvania from levying a succession tax upon tangible personal property, consisting of furniture, pictures, etc., of one of its citizens, when that tangible personal property had a physical and permanent situs outside of the State and was taxed where it was so permanently located. This rule was deduced from the prior decision in *Union Refrigerator Transit Co.* v. *Kentucky,* 199 U. S. 194, where it was held that the State of Kentucky could not impose an *ad valorem* tax upon a domestic corporation upon its tangible personal property—railroad equipment—permanently located outside of the State. But this case, as indeed did the *Frick* case, recognized that no such prohibition existed as regards intangible personal property. Indeed, the Court said (p. 205):

> "Respecting this, there is an obvious distinction between the tangible and the intangible property, in the fact that the latter is held secretly; that there is no method by which its existence or ownership can be ascertained in the State of its *situs,* except perhaps in the case of mortgages or shares of stock. So if the owner be discovered, there is no way by which he can be reached by process in a State other than that of his domicil, or the collection of the tax otherwise enforced. In this class of cases the tendency of modern authorities is to apply the maxim *mobilia sequunter personan,* and to hold that the property may be taxed at the domicil of the owner as the real *situs* of the debt, and also, more particularly in the case of mortgages, in the State where the property is retained."

And subsequent to that case it was held that a State might tax tangible personal property—steamships—permanently located outside of the State, when such property had acquired no actual *situs* for the purpose of taxation. *Southern Pacific Co.* v. *Kentucky,* 222 U. S. 63.

The same distinction between the tangible personal property, consisting of furniture and paintings, which had a permanent and physical *situs* outside of the State, involved in the *Frick* case, and intangible personal property, such as debts, choses in action, specialties and bonds, was recognized in the *Frick* case. There the Court quoted at length from *Pullman's Car Company* v. *Pennsylvania,* 141 U. S. 18, 22, where a distinction was made between tangible and intangible personal property, and went on to say (p. 494):

> "Counsel for the State cite and rely on *Blackstone* v. *Miller,* 188 U. S. 189, and *Bullen* v. *Wisconsin,* 240 U. S. 625. Both cases related to intangible personalty which had been regarded as on a different footing from tangible property. When they are read with this distinction in mind, and also in connection with other cases before cited, it is apparent that they do not support the tax in question."

And in the most recent case of *Rhode Island Trust Company* v. *Doughton,* 270 U. S. 69, this Court said (pp. 80-81):

> "A State has no power to tax the devolution of the property of a non-resident unless it has jurisdiction of the property devolved, or its transfer. In the matter of intangibles, like choses in action, shares of stock, and bonds, the *situs* of which is with the owner, a Transfer tax of course may be properly levied by the State in which he resides."

This is the latest expression by the Supreme Court of the United States of the extent of the prohibition of which the Fourteenth Amendment imposes upon the States in the exercise of their taxing power. In its opinion, however, the State Court held that under the *Frick* case New York, and New York alone, could tax these obligations of the United States. In coming to that conclusion it cited *New Orleans* v. *Stempel,* 175 U. S. 309, 321, and *Westinghouse Electric Mfg. Co.* v. *Los Angeles,* 188 Calif. 491. But those cases recognizing the power of the State in which the bonds are permanently located to tax them, in no way destroy the power of the domiciliary State, Connecticut, to impose a tax upon the succession to, or the transfer of, the same property.

As a matter of fact, New York does not, and it did not impose upon the Estate of ROBERT B. HIRSCH, a succession or transfer tax upon these bonds and certificates of indebtedness in question. An examination of the inheritance tax statutes of other States shows that the States of Arkansas, California, Delaware, Kansas, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, Wisconsin and Wyoming do not tax the municipal bonds of non-residents, even when the written evidences of indebtedness are found within the State.

Moreover, one reason commonly advanced to support taxation by the State in which the evidences of indebtedness are found is the aid which that State may give under its laws to the collection of the debt. But in this instance, the State of New York can give no aid to the collection of or the enforcement of the obligations of the United States.

The power of Connecticut to tax is not dependent upon the solution of the question of the power of New York to tax. And where New York and the great majority of commercial States have decided not to tax such property of non-residents, the sustaining of this decision would wholly exempt that property from taxation.

SECOND. Your petitioner is competent to maintain this petition.

This petition is sought by the Tax Commissioner of the State of Connecticut on behalf of the State of Connecticut. Under the laws of that State he is charged with the enforcement of the Inheritance and Succession Tax Act. In order, however, that no possible doubt of his right to present this petition should exist and in order that it should be clearly understood that the aggrieved party is not the Tax Commissioner in his official capacity, but the State of Connecticut, the General Assembly has by Act of February 23, 1927, specifically directed the Tax Commissioner in his name and on behalf of the State to present this petition. A copy of that statute is printed as an appendix to this petition.

There can be no limit upon the power of the State of Connecticut to impose a tax upon the succession to or the transfer of personal property of its resident citizens unless that limitation is imposed by the Constitution of the United States and there is but one final judge of the meaning of that Constitution. We submit that the State is entitled to have the limits of its power adjudicated by the only Court competent finally to determine the issue.

The cases where a State Court has sustained a State statute as constitutional, either under the State Constitu-

tion or under the Federal Constitution, and an official of the State has attempted to maintain a writ of error upon the ground that the statute is invalid under the Federal Constitution, such as *Lampasas* v. *Bell*, 180 U. S. 276; *Braxton County Court* v. *West Virginia*, 208 U. S. 192; *Smith* v. *Indiana*, 191 U. S. 138; *Marshall* v. *Dye*, 231 U. S. 250; *Stewart* v. *Kansas City*, 239 U. S. 14, are manifestly not applicable. This is not a case where a State official is claiming that a law, the constitutionality of which has been sustained by the State Courts, is unconstitutional under the Federal Constitution. It is on the contrary a case where the officer charged by the law with the enforcement of a statute which has been held to be unconstitutional under the Federal Constitution is seeking on behalf of the State for a review of that decision. There surely can be no doubt but that a State is entitled to have the measure of its rights in levying succession taxes adjudicated by this Court.

THIRD. This petition presents a Federal question of importance and merits the consideration of this Court.

The power of the State of Connecticut to impose a tax upon the succession to or the transfer of property of a citizen, such as municipal bonds, wherever they may happen to be located at the time of his death, is an important attribute of its sovereignty. The applicable rules of law, we believe, sustain this highly important power—a power now asserted by the legislation of almost every State. Certainly this Court has never decided that a State has no power to tax the succession to government bonds belonging to its citizens when such bonds happened to be out of the

State at the time of the citizen's death. The *Frick* case is not authority for any such proposition. It concerned property such as furniture and pictures which had a permanent physical *situs* outside, and was taxed outside, of the domiciliary State. We submit that State Courts of Connecticut erred in holding that the *Frick* case necessitated the conclusion that the Connecticut statute, imposing a tax upon the succession to these municipal bonds of a citizen and resident, was invalid and unconstitutional because those bonds happened to be out of the State at the time of his death.

If the decision of the State Court is permitted to stand, it is evident that many persons residing in Connecticut will have the opportunity to deposit their United States bonds and Treasury Certificates of indebtedness in New York, or move them about from place to place without the State of Connecticut and thus altogether escape a tax upon the succession to this property. Such a result is not desirable when it is predicated upon a lack of the power of the State of domicil to impose the tax. There is no question but that the language of the State statute here involved is broad enough to impose the tax held invalid. The only reason why the tax has not been collected is because the Superior Court of Fairfield County, Connecticut, has, in accordance with the advice of the Supreme Court of Errors, felt obliged to extend the prohibition of the *Frick* case to a limit never held by this Court. It is earnestly submitted that it is of the utmost importance both to the State of Con-

necticut and to the other States of the Union that this question be decided by this Court.

Respectfully submitted,

Benjamin W. Alling.

BENJAMIN W. ALLING,
Attorney General of Connecticut,

Farwell Knapp

FARWELL KNAPP,
Inheritance Tax Attorney of Connecticut.

CHARLES E. HUGHES

Lucius F. Robinson

LUCIUS F. ROBINSON
Counsel.

Appendix.

STATE OF CONNECTICUT,

General Assembly,
January Session A. D. 1927

AN ACT CONCERNING A PETITION TO THE SUPREME COURT OF THE UNITED STATES FOR WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE STATE COURTS UPON THE CONSTIUTIONALITY OF CHAPTER 190 OF THE PUBLIC ACTS OF 1923, CONCERNING SUCCESSION AND TRANSFER TAXES.

WHEREAS, in a judgment entered December 10, 1926, by the Superior Court for Fairfield County in accordance with the advice of the Supreme Court of Errors in a certain action entitled "Arthur Silberman *et als.*, Executors, *v.* William H. Blodgett, Tax Commissioner (Arthur Silberman *et als.*, Executors' Appeal from Probate), it has been held that Chapter 190 of the Public Acts of 1923, being an Act concerning succession and transfer taxes, in so far as it imposes a tax upon the estates of decedents resident of this State in respect to certain classes of property belonging to them at their death, is in violation of the Fourteenth Amendment of the Constitution of the United States; and the question involved in said action of the right and power of the State to impose inheritance and other taxes upon the property of its citizens, or the succession thereto, or the transfer thereof, is a fundamental one, and its final determination by the Supreme Court of the United States is of the highest importance to this State and to its citizens and until such decision the situation

caused by the rulings of the Courts of this State constitutes an emergency, therefor

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. The Tax Commissioner is empowered and directed in his name and in behalf of the State to petition the United States Supreme Court for review on writ of certiorari of the decision of the Superior Court of this State in the action aforesaid and the Attorney-General is empowered, with such associate counsel as he may deem requisite and proper, to present such petition to the United States Supreme Court in behalf of the Tax Commissioner and the State and if a writ of certiorari be granted to appear for and represent the Tax Commissioner and the State in the trial of said action in said Court.

SECTION 2. This act shall take effect from its passage.

Approved February 23, 1927,
JOHN H. TRUMBULL,
Governor.